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TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1940

No. 51

JAMES M. WRIGHT, PETITIONER,

vs.

**THE UNION CENTRAL LIFE INSURANCE COMPANY
ET AL.**

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT
OF APPEALS FOR THE SEVENTH CIRCUIT**

PETITION FOR CERTIORARI FILED APRIL 12, 1940.

CERTIORARI GRANTED MAY 20, 1940.

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[fol. 1]

**IN UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF INDIANA, FORT WAYNE
DIVISION**

Cause No. 2073

In Bankruptcy

In the Matter of JAMES M. WRIGHT, Debtor

[Caption omitted]

**[fol. 2] REPORT OF CONCILIATION COMMISSIONER—Filed
December 19, 1934**

Byron G. Jenkins, Atty.,

Portland, Indiana

December 12th, 1934.

Cause No. 2073

JAMES M. WRIGHT, Debtor

**To the Hon. Thomas W. Slick, Judge U. S. District Court,
South Bend, Indiana.**

**Your commissioner begs to submit the following report
in this cause:**

**Notices as furnished by the court were mailed in franked
envelopes to each creditor named in debtor's petition on
November 26, 1934.**

**The date of the hearing was fixed for 2 o'clock, Dec. 12,
1934 at the office of the Commissioner, in Portland, Indiana.**

**Those present: Union Central Life Insurance Co., by its
attorney R. D. Wheat, Portland, Ind.; First Joint Stock
Land Bank, by its attorney, Judge Vesey, Ft. Wayne, Ind.;
Citizens Bank, by its cashier, Paul C. Jaqua; Pennville
Bank, Pennville, Ind., not represented; James M. Wright,
debtor.**

**Notice of said hearing by publication was given in the
Pennville Booster, a weekly newspaper printed and pub-
lished at Pennville, Jay County, Indiana, on Thursday,
Nov. 29, 1934, and proof of publication is filed herewith and
made a part of this report. Its charge, \$5.00, not paid.**

The hearing disclosed, that on Nov. 24, 1933, debtor was offered a loan of \$8500.00 by The Federal Land Bank of Louisville, Ky., on the real estate (280.31 acres) on which Union Central Life Ins. Co. holds a first mortgage of \$15,049.66, principal and interest, together with costs in foreclosure, complaint filed in the Jay Circuit Court, to date, no judgment.

That on Dec. 12, 1933, debtor was offered a loan of \$2800.00 by The Federal Land Bank, Louisville, Ky., on the real estate (80.31 acres) on which First Joint Stock Land Bank, Ft. Wayne, Ind., holds a first mortgage of \$3000.00 together with interest thereon and costs, the bank having lodged a complaint in foreclosure in the Jay Circuit Court.

The year of redemption has not run in either of the foreclosures.

At the time said sums of money were available to debtor, the Union Central Life Insurance Co., was offered said sums, less any amounts necessary to satisfy taxes and other deductions, and the Union Central Life Ins. Co., refused to accept said sums in full of their notes and mortgages.

At the same time \$2800.00, less the taxes and other deductions was offered by the debtor to First Joint Stock Land Bank on its mortgage of \$3000.00 on 80.31 acres and the bank refused to accept the residue in full of its note and mortgage.

More than 9 months having elapsed since the loans were available to debtor the same were and are automatically cancelled by The Federal Land Bank. At the hearing the debtor had no tangible offer to make to his creditors and could not have a proposition in composition of his debts until another application for a loan was made to offer to creditors.

No Conciliation, Adjustment or Settlement was perfected by your commissioner.

I now return this case for your further direction.

Respectfully submitted, Byron G. Jenkins, Conciliation Commissioner, Jay County, Portland, Ind.

A copy of report is this day mailed to all parties interested.

[fol. 3] IN UNITED STATES DISTRICT COURT

ORDER APPROVING REPORT OF CONCILIATION COMMISSIONER—
December 21, 1934

The Court, having read the report of the Conciliation Commissioner and being fully advised therein, now approves the same.

IN UNITED STATES DISTRICT COURT

MOTION TO DISMISS—Filed January 3, 1936

Comes now The Union Central Life Insurance Company and objects to any and all proceedings in reference to the bankruptcy of the above named debtor; and objects to each and every step hereafter taken in such proceedings, or attempted to be taken in this cause, either in the District Court of the United States for the Northern District of Indiana and before Byron G. Jenkins, conciliation commissioner, in and for Jay County, in the State of Indiana, other than the dismissal thereof, for the following reasons and each of them, separately and severally considered:

1. That this cause was filed on October 30, 1934, and on said October 30, 1934, said petition of James M. Wright praying that he be afforded an opportunity to effect a composition or an extension of time to pay his debts under Sec. 75 of the Bankruptcy Act (11 U. S. C. A. Sec. 202 or 203) was referred to Byron G. Jenkins, one of the conciliation commissioners of this court. That a hearing was had before said conciliation commissioner and on December 12, 1934, said commissioner reported to this court as follows, to-wit: "No Conciliation, adjustment or settlement was perfected by your commissioner."

That on December 19, 1934, the debtor filed herein his petition "to amend his petition and asks to be adjudged a [fol. 4] bankrupt" and claiming his exemption under Sec. 75 of the United States Bankruptcy Laws. This petition was referred to William B. Duff, one of the Referees in Bankruptcy of this court, in the absence of the Judge of this court and said referee was ordered "to consider said petition and take such proceedings therein as are required by

said acts" (Sec. 75, Sub-Section "S" of the Bankruptcy Act).

That, on the 2nd day of May, 1934, William B. Duff, Referee in Bankruptcy, made the following order in this case: "It is ordered that the said James M. Wright be and he is hereby declared and adjudged bankrupt accordingly." This order has never been approved or confirmed by this court.

2. On May 27, 1935, the Supreme Court of the United States held the Section of Act under which this proceedings was filed unconstitutional.

3. On August 28, 1935, congress enacted a new amendment to Sec. 75 of the Bankruptcy Act which is called the Frazier-Lemke Act. T^hat the so-called Frazier-Lemke Act, Sec. 75 (s) under the Bankruptcy Act of the United States, as amended in 1935 is unconstitutional and void for the following reasons and each of them, separately and severally considered.

(a) Such Act and Section 75 (s) thereof are in violation of the Fifth Amendment of the United States Constitution.

(b) Such Act and Amendment are in violation of Article I Paragraph 8, of the United States Constitution.

(c) Such Act and Amendment thereof are in violation of Paragraph 8, Amendment Fifth, of the Constitution of the United States.

(d) Such Act and Amendment are in violation of Article 1, paragraph 8, Amendment Tenth; of the United States Constitution.

(e) Such Act and Amendment are unconstitutional, as they deprive mortgages of property rights, without compensation.

(f) When the value of the property is not equal to the mortgage debt, then such property cannot be sold free of [fol. 5] liens. The value of the real estate involved in this transaction is less than the mortgage incumbrance thereon, as admitted by mortgagor in her violation in her last of assets.

(g) The Congress of the United States has no power to compel a mortgagee to release his debt, unless paid in full,

and this Act attempts to do this, irrespective of the amount paid the mortgagee.

(See Radford vs. United States S. C. Receiver, Volume 55, page 869.)

(h) This Act attempts to enforce a composition of a debt secured by a mortgage lien held by a single creditor.

See Radford vs. United States S. C. Receiver, Volume 55, page 869.

(i) The Act in question provides for a composition that may reduce the amount of the lien of a secured creditor, notwithstanding such creditor might be willing to make a higher offer for the property.

See Radford vs. United States S. C. Receiver, Volume 55, page 869.

(j) Under this Act, the rate of interest on all debts, secured and unsecured, may be reduced.

See Amended Section 75, Bankruptcy Act.

(k) This Act prohibits state and county taxing units from taking any action to enforce the payment of taxes due on said real estate.

See Amended Section 75, Bankruptcy Act.

(l) Such a prohibition against the sovereign authority of the state, in the collection of taxes, transcends the bankruptcy power of Congress.

See Amendment Ten, United States Constitution.

(m) When title has passed to the mortgagee, except the naked right of redemption, under a bankruptcy statute, we contend Congress has no power to create a new property interest.

For the reasons given (a) to (m), both inclusive, the said Section 75 (s) should be declared unconstitutional and the [fol. 6] whole proceedings of the said James M. Wright thereunder dismissed.

3. That on the — day of —, 1935, the debtor filed his petition in this cause and in this court requesting "the court

to take advantage of the provisions of said Sec. 75 (s) as so amended" and the following order was made thereon, to-wit:

It is Therefore Ordered that adjudication and order of reference to said referee in bankruptcy be and the same is hereby vacated and set aside;

And Whereas, the Judge of said Court was absent from said district or division at the time of filing said petition, it is thereupon ordered that this case be re-referred to Byron Jenkins, Conciliation Commissioner for Jay County, Indiana, for further administration in accordance with the provisions of said Act.

Witness my hand and the seal of said Court, at Fort Wayne in said District, on the 1st day of November, A. D. 1935.

Margaret Long, Clerk, by Jane H. Allen, Deputy Clerk.

4. That said petition was received by Byron Jenkins, Conciliation Commissioner, on November 2, 1935, and notice by one publication was given of a hearing on December 19, 1935, and on said date said commissioner made the following orders in said matter, to-wit:

Motion by creditor, Union Central Life Insurance Company, Cincinnati, Ohio, to dismiss this proceeding alleging that the Frazier-Lemke Act is unconstitutional, and for the further reason, that creditor now has a sheriff's deed for certain real estate listed as an asset of said bankrupt, filed counsel for petitioner, Hon. R. D. Wheat, Portland, Indiana, objection to filing of motion by debtor for the reason that commissioner has no authority to pass on the questions raised. Sustained.

Motion by secured creditor, First Joint Stock Land Bank, Ft. Wayne, Indiana, to dismiss said bankruptcy proceedings [fol. 7] as against it and to dismiss said proceedings as against certain real estate and the claim of said bank and permit said creditor to proceed with the foreclosure of its mortgage. Filed, objection by debtor to the filing of said motion for the reason that commissioner has no authority to pass on the questions raised. Sustained.

Verified objections to the jurisdiction of the court and its officers filed by First Joint Stock Land Bank of Ft. Wayne, Indiana.

The debtor having heretofore been adjudged a bankrupt, I now appoint Carman Alexander, Trustee herein, and fixes his bond in the sum of \$500.00. The commissioner now appoints, Nathan A. Sprunger, W. E. Nihart and John S. Tharp as appraisers herein to appraise the property listed as assets of said bankrupt in his schedule.

5. The Union Central Life Insurance Company further shows to the court that it is a preferred creditor of said debtor; that it held a first mortgage lien on the following described real estate in Jay County, Indiana, to-wit:

The North half of the Northwest quarter of Section four (4), Township Twenty-three (23) North, Range Thirteen (13) East, containing 80.31 acres, more or less.

That said mortgage was foreclosed in the Adams Circuit Court on the 6th day of June, 1934, and a judgment was rendered by said court against this debtor in the sum of \$3,881.45 and the mortgage was foreclosed and the real estate ordered sold to satisfy said judgment and that on the 12th day of July, 1934, said real estate was sold pursuant to said decree of said court by the sheriff of Jay County, to The Union Central Life Insurance Company for \$3,595.00 and a Sheriff's certificate of sale was issued by said sheriff to The Union Central Life Insurance Company.

That this debtor nor any other person redeemed said real estate and on the 12th day of August, 1935, The Union Central Life Insurance Company presented said Sheriff's Certificate of Sale to the sheriff of Jay County and demanded and received a sheriff's deed for such real estate [fol. 8] which deed was filed for record in the office of the recorder of Jay County, Indiana, on the 2nd day of August, 1935, and was recorded in Deed Record No. — at page —.

That The Union Central Life Insurance Company also held a first mortgage lien on the following described real estate in Jay County, Indiana, to-wit:

The South East quarter of Section Thirty-one (31), Township Twenty-four North, Range Thirteen (13) East, containing One Hundred and Sixty (160) acres, more or less.

Also, the South East quarter of the South West Quarter ($\frac{1}{4}$) of Section Thirty-one (31), Township Twenty-four (24) North, Range Thirteen (13) East, containing Forty (40) acres more or less. Containing in both the above described tracts Two Hundred (200) acres, more or less.

That said mortgage was foreclosed in the Adams Circuit Court on the 27th day of May, 1935, and judgment was rendered against this debtor, James M. Wright, in the sum of \$11,975.00 and said real estate was ordered sold to satisfy said judgment.

That on the 20th day of July, 1935, the sheriff of Jay County, Indiana, sold said real estate pursuant to said judgment and decree to The Union Central Life Insurance Company for \$12,174.31 and issued a sheriff's certificate of sale for said real estate to The Union Central Life Insurance Company and the debtor nor any other person has redeemed said real estate.

6. That the debtor scheduled the above described real estate and 80 acres of other real estate owned by him and fixed its value in said schedule, under oath, at \$10,845.00. [fol. 9] That the debtor is now in possession of said real estate and has been at all times for more than three years and has received and retained the rents and income therefrom and has neglected and refused to pay the taxes on said real estate and to keep the buildings thereon insured and to pay the premium therefor and to pay the accrued interest or any part of said claim and is permitting said real estate and the buildings thereon to deteriorate and greatly depreciate in value and to the great damage and injury of this creditor.

Wherefore, as to said real estate described in Item 5 hereof, The Union Central Life Insurance Company contends that said James M. Wright should be required to account to this court for all the rents and issues received from the said real estate since the filing of his original petition herein, to-wit: October 30, 1934, to be paid out upon order of this court; that the bankruptcy proceedings of said James M. Wright should be dismissed as to said real estate; and that the trustee appointed by the conciliation commissioner be ordered to release said real estate and that the same be ordered delivered to The Union Central Life Insurance Company.

7. And the said The Union Central Life Insurance Company for the foregoing reasons, and each of them separately and severally considered, asks that all of the proceedings in this cause of James M. Wright, be dismissed as to the

above and within described real estate and that said real estate be released from the custody of this court.

The Union Central Life Insurance Company, by Roscoe D. Wheat, Its Attorney, Portland, Indiana.

Duly sworn to by Roscoe D. Wheat. Jurat omitted in printing.

[fol. 10] IN UNITED STATES DISTRICT COURT

REPORT OF CONCILIATION COMMISSIONER—Filed December 3, 1936

The undersigned Conciliation Commissioner begs to submit the following report of his doings herein:

September 6th, 1936. Verified motion by Union Central Life Insurance Company asking that all real estate set out in its petition be stricken from debtor's schedule and that the Trustee make a final report and be discharged as to specific real estate, received.

October 26th, 1936. Notices by mail to all creditors advising of the filing of the motion and of the date of hearing set for November 6th, 1936.

November 6, 1936. Verified answer by debtor filed asking that the Commissioner recommend overruling of above motion, or asking continuance, pending the appeal of an action brought by Union Central Life Insurance Co., from the Jay Circuit Court and Adams Circuit Court to the Supreme Court of Indiana, on question of possession, filed.

Submission: Motion to strike out the real estate and for the discharge of Trustee, submitted.

[fol. 11] By agreement of council, R. D. Wheat, Attorney for Union Central Life Insurance Company, and Cook & Ashcraft, attorneys for debtor, all evidence to be submitted to the commissioner are the admitted allegations in the verified motion by Union Central Life Insurance Co., and the verified allegations in the answer of debtor.

Upon examining the motion to strike out the real estate from debtor's schedule and that the Trustee herein make and file his final report as to the specific real estate set up in the motion of Union Central Life Insurance Company, and also upon examining the answer to said motion by the debtor, your commissioner finds:

1. That the real estate described in the schedule of debtor is identical with the real estate described in the motion by Union Central Life Insurance Company, Excepting,

2. That there still remains in said schedule the following described real estate not effected by the motion to-wit:

The south half of the northeast quarter of section 4, township 23 north range 13 east containing 80 acres.

Also, part of the east half of the north half of the southwest quarter section 4, township 23 north range 13 east, containing $1\frac{1}{2}$ acres.

3. That the allegations in re the conveyances in the motion of Union Central Life Insurance Company to strike certain real estate from the debtor's schedule are true and correct as shown by the records of the Recorder of Jay County, and that the motion in its entirety should be sustained.

Recommendations: The real estate described by Union Central Life Insurance Company should be stricken from debtors schedule and the Trustee be ordered to file his final report as to said real estate.

[fol. 12] The original Petition, schedule, Motion and Answer in this cause are returned herewith for the further order of the Court.

December 2, 1936.

Respectfully submitted, Byron G. Jenkins, Conciliation Commissioner, Jay County, Indiana.

SUPPLEMENTAL REPORT

The Trustee, Carman Alexander, together with the debtor, James M. Wright, called at the office today, and the Trustee reported, that on the farms included in the schedule of debtor, the debtor has harvested about 300 bushels of soy beans and that the crop could be hauled to market now, and the two fifths of said beans could be turned over to the trustee, but that the attitude of debtor, James M. Wright, is that he intends to hold all the crops there until the final disposition of the Fraser Lemke bill as to its constitutionality, if the bill is upheld, he will turn over the two fifths, if unconstitutional, he will keep everything.

This is the Exact Attitude of Debtor.

Byron G. Jenkins, Conciliation Commissioner.

IN UNITED STATES DISTRICT COURT FOR THE NORTHERN
DISTRICT OF INDIANA, FORT WAYNE DIVISION

Cause No. 2073

In the Matter of JAMES M. WRIGHT, Bankrupt

MOTION BY THE UNION CENTRAL LIFE INSURANCE COMPANY FOR AN ORDER TO STRIKE CERTAIN REAL ESTATE FROM THE SCHEDULE AND INVENTORY AND APPRAISEMENT FILED IN THIS MATTER AND AN ORDER AGAINST THE CONCILIATION COMMISSIONER WITHDRAWING SAID REAL ESTATE FROM HIS JURISDICTION AND CONTROL AND AN ORDER AGAINST THE RECEIVER APPOINTED BY THE CONCILIATION COMMISSIONER SETTING ASIDE AND VACATING ANY LEASES OR CONTRACTS ENTERED INTO BY HIM IN RELATION TO SAID REAL ESTATE

[fol. 13] To The Hon. Thomas W. Slick, Judge United States District Court:

Your petitioner, The Union Central Life Insurance Company, respectfully shows that on the first day of October, 1925, the bankrupt, James M. Wright, was the owner in fee simple of the following described real estate in Jay County, Indiana, to-wit:

The Southeast quarter of Section Thirty-one (31), Township Twenty-four (24) North, Range Thirteen (13) East, containing One Hundred Sixty acres, more or less.

Also, the southeast quarter of the southwest quarter of Section Thirty-one (31), Township Twenty-four (24) North, Range Thirteen (13) East, containing Forty (40) acres, more or less.

Containing in both the above described tracts two hundred (200) acres, more or less.

That on said 1st day of October, 1925, to secure the payment of a note in the sum of \$9,000.00, which was payable to this petitioner, the said James M. Wright and Emma G. Wright, his wife, executed and delivered to this petitioner their mortgage on said real estate, which mortgage was duly recorded in the office of the Recorder of Jay County, Indiana, on October 26, 1925, in Mortgage Record No. 43, at page 415.

That the said James M. Wright was also the owner of the following described real estate in Jay County, Indiana, to-wit:

The North half of the Northwest quarter of Section Four (4), Township Twenty-three (23) North, Range Thirteen (13) East, containing Eighty and thirty one hundredths (80.31) acres, more or less.

and that this petitioner held a mortgage lien on said real estate to secure the payment of a note calling for \$3,000.00, which note and mortgage was executed by James M. Wright and wife.

That on the 14th day of October, 1931, the said James M. Wright and Emma G. Wright, his wife, executed and delivered a warranty deed to Walter C. Wright for the following described real estate in Jay County, Indiana, to-wit:

[fol. 14] The North half of the Northwest Quarter of Section Four (4), Township Twenty-three (23) North, Range Thirteen (13) East, containing eighty and thirty one hundredths (80.31) acres, more or less.

That said deed was filed for record in the office of the Recorder of Jay County, Indiana, on the 14th day of October, 1931, and was duly recorded in Deed Record No. 80 at Page 83 and that a certified copy of said deed is attached hereto, made a part hereof, and marked Exhibit "A".

That on the 14th day of October, 1931, the said James M. Wright and Emma G. Wright, his wife, executed a warranty deed to Edna E. Coon to the following described real estate in Jay County, Indiana, to-wit:

The Southeast quarter of the southeast quarter of Section Thirty-one (31), Township Twenty-four (24) North, Range Thirteen (13) East, containing forty (40) acres,

and that said deed was duly filed for record in the office of the Recorder of Jay County, Indiana, on the 14th day of October, 1931, and was recorded in Deed Record No. 80 at page 83 and that a certified copy of said deed is attached hereto, made a part hereof, and marked Exhibit "B".

That on the 14th day of October, 1931, James M. Wright and Emma G. Wright, his wife, executed a warranty deed to John E. Coon for the following described real estate in Jay County, Indiana, to-wit:

The Northeast quarter of the Southeast quarter of Section Thirty-one (31), Township Twenty-four (24) North, Range Thirteen (13) East, containing Forty (40) acres,

and that said deed was duly filed for record in the office of the Recorder of Jay County, Indiana, on October 14, 1931, and recorded in Deed Record No. 80 at page 83 and that a certified copy of said deed is attached hereto, made a part hereof, and marked Exhibit "C".

That on the 14th day of October, 1931, James M. Wright executed a warranty deed to Emma G. Wright, his wife, for the following described real estate in Jay County, Indiana, to-wit:

[fol. 15] The Southeast quarter of the Southwest quarter of Section Thirty-one (31), Township Twenty-four (24) North, Range Thirteen (13) East, containing Forty (40) acres,

which deed was duly filed for record in the office of the recorder of Jay County, Indiana, on the 25th day of February, 1932, and recorded in Deed Record No. 80 at Page 216 and that a certified copy of said deed is attached hereto, made a part hereof, and marked Exhibit "D".

That prior to October 30, 1934; this petitioner filed its complaint in the Jay Circuit Court, Jay County, Indiana, against James M. Wright, Emma G. Wright, Edna E. Coon, John E. Coon, Walter C. Wright and Citizens Bank of Portland, Indiana, for a personal judgment against James M. Wright and foreclosure of the mortgage executed by him as above set out in this petition and that said cause was venued from Jay County to Adams County, Indiana, and that while said action was pending and on said 30th day of October, 1934, the said James M. Wright filed his petition in bankruptcy under the Frazier-Lemke Act; that the said James M. Wright filed a schedule of his property and included therein and in said schedule inventoried the above described real estate and made affidavit and oath that he was the owner of the same when in truth and in fact, he was not the owner of said real estate but had sold and conveyed the same as shown by Exhibits "A" "B" "C" and "D" filed herewith.

That long after the filing of said petition in bankruptcy by the said James M. Wright, to-wit: on the 13th day of April, 1935, Walter C. Wright and Virgie M. Wright, his wife, John E. Coon and Edna E. Coon, his wife, executed and delivered a quit-claim deed to James M. Wright, for the following described real estate in Jay County, Indiana, to-wit:

The North one half ($\frac{1}{2}$) of the northwest quarter ($\frac{1}{4}$) of Section Four (4), Township Twenty-three (23) North Range Thirteen (13) East, and the East one half ($\frac{1}{2}$) of the southeast quarter ($\frac{1}{4}$) of Section Thirty-one (31), Township Twenty-four (24) North, Range Thirteen (13) East.

[fol. 16] Also the south half of the east half of the southwest quarter of Section Thirty-one (31), Township Twenty-four (24) North, Range Thirteen (13) East, containing 40 acres, more or less.

and that said deed was duly filed for record in the office of the Recorder of Jay County, Indiana, on the 13th day of April, 1935, and Recorded in Deed Record No. 82 at Page 38 and that a certified copy of said deed is attached hereto, made a part hereof, and marked Exhibit "E".

That on the 27th day of May, 1935, The Union Central Life Insurance Company secured a personal judgment against James M. Wright in the Adams Circuit Court in the sum of \$11,975.11 and that foreclosure of its mortgage securing the same, which mortgage covers the two hundred acre tract of land above described in Section Thirty-one (31), Township Twenty-four (24) North, Range Thirteen (13) East, and an order of foreclosure against this bankrupt, James M. Wright, and Walter C. Wright, Edna E. Coon and John E. Coon, and the court ordered that a certified copy of said judgment be issued to the Sheriff of Jay County, Indiana, and that he sell said real estate as on execution; that the record shows that Emma G. Wright, the wife of James M. Wright, was deceased and that James M. Wright, Edna E. Coon, Walter C. Wright were her heirs at law.

That the sheriff of Jay County, Indiana, received a certified copy of said judgment, decree and order of sale and advertised said real estate for sale as required by the laws of the State of Indiana and advertised that said real estate would be sold at the east door of the court house, Portland, Indiana, on the 20th day of July, 1935, and that on said 20th day of July, 1935, the sheriff did offer the real estate for sale at public auction and The Union Central Life Insurance Company bid the sum of \$12,174.31 for the fee simple title of said real estate and that being the highest and best bid the said two hundred acres of land was struck off and sold to The Union Central Life Insurance Company

and it having paid the amount of its bid, the sheriff executed [fol. 17] and delivered to it a sheriff's certificate of sale and the year of redemption having expired and no one having redeemed said real estate, and The Union Central Life Insurance Company having retained possession and ownership of said sheriff's certificate of sale did on the 20th day of July, 1936, present said certificate of sale to the sheriff of Jay County, Indiana, and demanded a deed for said real estate and Tandy Ferguson, Sheriff of Jay County, Indiana, did on the 20th day of July, 1936, execute and deliver to The Union Central Life Insurance Company a sheriff's deed for said real estate, which deed was filed for record in the office of the Recorder of Jay County, Indiana, and recorded on the 20th day of July, 1936, in Deed Record No. — at Page — and a copy of said deed is filed herewith, made a part hereof, and marked Exhibit "F".

That by reason of the deeds of James M. Wright, being Exhibits "A" "B" "C" and "D" and by reason of the foreclosure of the mortgage executed by him and the sale of said real estate and his failure to redeem said real estate, the said James M. Wright, bankrupt, has no right, title or interest in and to said real estate nor is there any equity therein for his creditors and that The Union Central Life Insurance Company is now the absolute owner of said real estate and entitled to the possession thereof and entitled to have its title thereto cleared and quieted as to James M. Wright and his creditors.

That this bankruptcy proceedings was referred to Hon. Byron G. Jenkins, conciliation commissioner, and the said conciliation commissioner appointed one Carmen Alexander as receiver of said real estate and the said Carmen Alexander has entered into a lease contract which involves said real estate and the title thereto and the controls of said conciliation commissioner and that of Carmen Alexander as Receiver, should be set aside and vacated and any contract entered into by said receiver in relation to said real estate should be set aside, vacated and declared at naught. [fol. 18] That notice has been served upon James M. Wright, Edna E. Coon, John E. Coon, Walter C. Wright, Byron G. Jenkins and Carmen Alexander that this petition will be presented and filed with the referee in bankruptcy and proof of the service of said notice is filed herewith.

Wherefore, your petitioner moves the court for an order striking out and removing from the schedule filed in this

cause and the inventories and appraisements filed in this cause the real estate above described and removing the same as any part of the assets claimed by said bankrupt and that the said Hon. Byron G. Jenkins, conciliation commissioner, be ordered and directed to remove and release said real estate from any claim of jurisdiction on his part and that the said Carmen Alexander, as receiver, appointed by the conciliation commissioner, be ordered to release his jurisdiction, if any, over said real estate and to cancel any and all contracts entered into by him in relation thereto and for all other proper relief.

The Union Central Life Insurance Company, By
Roscoe D. Wheat, Its Attorney.

Duly sworn to by Roscoe D. Wheat. Jurat omitted in printing.

[fol. 19] IN UNITED STATES DISTRICT COURT

No. 2073

[Title omitted]

ANSWER TO MOTIONS TO STRIKE OUT CERTAIN REAL ESTATE
FROM SCHEDULES

Comes now James M. Wright, petitioner herein, and for answer and objections to the motions of The Union Central Life Insurance Company to strike certain real estate from his Schedules, alleges:

That he filed his petition and Schedules under Section 75 of the Bankruptcy Act in the United States District Court for the Northern District of Indiana, Fort Wayne Division, on the 30th day of October 1934; that said cause was referred to Byron G. Jenkins, Conciliation Commissioner of Jay County, Indiana; that all the steps under said Section 75 were taken; that later petitioner amended his petition under Subsection (s) of Section 75, as amended August 28, 1935, and he was duly adjudged a bankrupt.

That subsequent thereto, on the 24th day of February, 1936, an agreement was entered into between Carman Alexander, the duly appointed, qualified and acting Trustee in

Bankruptcy of James M. Wright, the petitioner herein, party of the first part and James M. Wright, party of the second part. That said Trustee rented the real estate set out in petitioner's petition and Schedules to him by virtue of what is known as the Frazier-Lemke Act (Subsection (s) of Section 75, as amended August 28, 1935) for a period covering the Bankruptcy. That said agreement included the same tracts of real estate as set out in said motions of said Company. That said agreement was examined and approved by Byron G. Jenkins, said Conciliation Commissioner and Referee, on the 24th day of February, 1936. [fol. 20] That petitioner has farmed said real estate pursuant to said agreement since said date. That the rental provided for in said agreement has been turned over by petitioner to said Trustee, who holds the same subject to the order of said District Court.

Petitioner further alleges that said Union Central Life Insurance Company filed its complaint for possession of part of said real estate in the Jay Circuit Court and damages for its unlawful detention against petitioner et al. That judgment was rendered against the defendants in said cause, and petitioner et al. appealed from said judgment and said appeal is now pending in the Supreme Court of Indiana. That said Company also brought suit in the Adams Circuit Court for possession of the remainder of said real estate and judgment was rendered in favor of the plaintiff and defendants, including petitioner, filed their appeal bond and are now perfecting said appeal.

That said appeals stay all proceedings as to said judgments and the proceedings before said Conciliation Commissioner concerning said real estate.

Wherefore petitioner asks that the Conciliation Commissioner and Referee herein overrule said motions to strike out said real estate from said Schedules or continue the same until said Supreme Court decides said appeals, and for all other proper relief in the premises.

Cook & Bailey & Wheeler Ashcraft, Attorneys for
Petitioner.

Duly sworn to by James M. Wright. Jurat omitted in printing.

[fol. 21] IN UNITED STATES DISTRICT COURT

ORDER APPROVING REPORT OF CONCILIATION COMMISSIONER—
December 14, 1936

The Court, having read the Conciliation Commissioner's report filed herein on December 3, 1936, and being fully advised therein now approves the report and finds the conciliation Commissioner's recommendations valid ones, to which ruling the debtor at the time excepts.

IN UNITED STATES DISTRICT COURT

PETITION TO DISMISS—Filed July 22, 1938

Your petitioner, The Union Central Life Insurance Company, a corporation, respectfully represents unto the Court as follows:

(1) That your petitioner is a corporation duly organized and existing under and by virtue of the laws of the State of Ohio and is, and at all times hereinafter mentioned was duly licensed to transact the business of life insurance, including the making and holding of loans and other investments, in the State of Indiana.

(2) That on and prior to October 30, 1934, the date that debtor's original petition and schedules were filed herein under Section 75 of the Bankruptcy Act, as amended, your petitioner was the legal holder and owner of a certain promissory note executed and delivered by debtor under date of October 1, 1925, in the principal amount of \$9,000.00, with interest thereon at the rate of 5% per annum, secured by mortgage of even date therewith conveying certain farm property in Jay County, Indiana, consisting of 200 acres of land, being more fully described as follows:

[fol. 22] The Southeast Quarter (SE $\frac{1}{4}$) of Section 31, Township 24 North, Range 13 East; also the Southeast Quarter (SE $\frac{1}{4}$) of the Southwest Quarter (SW $\frac{1}{4}$) of Section 31, Township 24 North, Range 13 East, containing in all 200 acres, more or less.

(3) That said note being in default, your petitioner did, on January 4, 1934, file its complaint to foreclose said mortgage in the Circuit Court of Jay County, Indiana, said

cause being entitled "The Union Central Life Insurance Company, a corporation, vs. James M. Wright, et al."; that the said James M. Wright (debtor herein) was duly served with process in said proceedings and appeared and made answer to said complaint; that on motion of debtor the venue of said cause was changed to the Circuit Court of Adams County, Indiana, as cause No. 14942 therein; that said foreclosure proceedings were duly prosecuted and on May 27, 1935, a final decree of foreclosure was entered therein by said Adams Circuit Court and said property was ordered sold to satisfy said indebtedness of said debtor to your petitioner in the amount of \$11,975.11 and a personal judgment was entered therein against said debtor in said amount, plus interest, together with costs, as determined in and by said decree and judgment; that thereafter, on July 20, 1935, said real estate was duly sold by the Sheriff of Jay County, Indiana, as ordered by said decree, to your petitioner for \$12,174.31, representing the full amount of said judgment, interest and costs to the date of said sale, and, in accordance with the statute of the State of Indiana, a certificate of said sale thereupon was duly executed and delivered by said Sheriff to your petitioner; that under the statute of the State of Indiana, the period for the redemption of said property from said sale expired on July 20, 1936 and said property was not redeemed by debtor, or anyone else, within said period and on July 20, 1936 the deed of said Sheriff to said property was duly executed and delivered to your petitioner pursuant to the statute of said State and on July 20, 1936, was filed for record in the office of the Recorder of Jay County, Indiana, and was then and there recorded in Deed Record No. — at page —.

[fol. 23] (4) That the above mentioned foreclosure proceedings were instituted, prosecuted and concluded by your petitioner in good faith and with due diligence and that by reason thereof it has been required to lay out and has laid out substantial sums of money for court costs, attorneys' fees and other legitimate expenses properly and necessarily incident to such proceedings.

(5) That at the time of the institution of said foreclosure proceedings and of the filing of debtor's original petition under Section 75 of the Bankruptcy Act, as amended, the title to 120 acres of real estate, did not stand in the name of debtor but in the name of divers other persons (who were

duly made and served with process as parties to said foreclosure proceedings) but that thereafter and on April 13, 1935 (prior to the entry of said foreclosure decree and judgment) said property was reconveyed to debtor by said other parties; that thereafter, on October 11, 1935, debtor filed his amended petition for relief under Section 75 (s) of the Bankruptcy Act, as amended August 28, 1935, and thereupon was duly adjudicated bankrupt thereunder; and that the Supreme Court of the United States has since held that the above described real estate thereupon came into the jurisdiction of this Court under and subject to the terms of said last named amendment and was entitled to be included in debtor's schedules herein.

(6) That on October 30, 1934, said proceeding under Section 75 (s) of the Bankruptcy Act, as amended August 28, 1935, was duly referred by this Court to the Honorable Byron G. Jenkins, Conciliation Commissioner of Jay County, Indiana, and by order thereof, under lease from Carman Alexander, as Trustee herein, debtor was permitted to remain in possession of said real estate upon condition that two-fifths of all crops harvested thereon be delivered to said Trustee.

(7) That in the schedules filed by debtor at the time of and in conjunction with the original petition filed by him herein on October 30, 1934, debtor included the above described real estate, together with other real estate, approximately [fol. 24] 241½ acres, or a total of 441½ acres therein scheduled, the value thereof being therein stated by debtor to be \$10,845.00, subject to mortgages (including that above described) in the aggregate principal sum of \$15,000.00 plus interest.

[fol. 24] (8) That, for the reasons, among others, herein-after set forth in this paragraph, debtor is not entitled to any further stay or relief under or by reason of these proceedings and no basis remains for any effort by this Court to afford such relief:

(a) Since said loan of \$9,000.00 (secured by mortgage on the above described real estate) was made by your petitioner to said debtor on October 1, 1925, debtor has not repaid or offered to repay any part of the principal thereof;

(b) Debtor has not paid to your petitioner any part of the interest which accrued on said loan after October 1, 1930;

(c) Debtor has paid no taxes assessed against said real estate for any year since 1932;

(d) Debtor has sold and retained the entire proceeds of all crops harvested on said land since said loan was made;

(e) Debtor has lived upon and enjoyed the full benefit of said land continuously since said loan was made;

(f) Debtor announced to said Trustee and Conciliation Commissioner (as shown by the latter's Supplemental Report filed herein December 2, 1936) that he intended to hold all crops harvested on said land until final determination of the constitutionality of said Section 75 (s), that if upheld he would turn over two-fifths of said crops, per lease with said Trustee, and if declared invalid, he would keep everything and as a matter of fact, has retained all crops or the proceeds thereof regardless of the decisions of the Supreme Court of the United States upholding the constitutionality of said Act.

(g) Debtor has defaulted in payments of principal, interest, insurance and taxes on all real estate loans made to [fol. 25] him since or at the time of the loan hereinabove described and, having failed to redeem from foreclosure sales, has lost other real estate in satisfaction of said loans;

(h) Debtor has not paid or been released or discharged from the above mentioned personal judgment of \$11,975.11 and has other judgments outstanding of record against him;

(i) Debtor has been adjudicated a bankrupt and is insolvent, his liabilities being far in excess of his assets;

(j) Debtor's present income is grossly insufficient to reduce in any substantial degree his outstanding liabilities or the current interest thereon and he has no income or other source of revenue in prospect whereby he may reasonably expect to liquidate or reduce his outstanding and current liabilities;

(k) Debtor's financial condition is beyond all reasonable hope or expectation of rehabilitation and this Court can afford him no relief herein whereby rehabilitation of said financial condition may be effected;

(l) Debtor has made no bona fide offer of extension and composition herein, has not paid or offered to pay any rental

for the occupancy by him of said land or the benefits realized by him therefrom, and has, in no respect complied with the provisions and conditions of said Section 75 precedent to the relief prayed by him thereunder or the orders of this Court made pursuant to said Section;

(m) Debtor's financial condition has not improved nor has he made any bona fide effort to benefit or relieve your petitioner or any other creditor during the period beginning with the filing of his amended petition under Section 75 (s), as amended August 28, 1935;

[fol. 26] (n) Debtor has already enjoyed a moratorium of more than seven years, largely of his own making, during all of which time he has taken the full benefit and proceeds of the above described real estate and has paid nothing, in any form, therefor;

(o) Debtor has failed, with minor exceptions, to maintain and care for said land, the ditches therein and the buildings and fences thereon since the making of said loan in October, 1925, has expended (except as stated) no part of the income from said land to said purposes and has permitted the same to fall into disrepair and shameful condition, thereby greatly depreciating and otherwise prejudicing the value of said security for said loan;

(p) Debtor, with intent to hinder, delay and prejudice this petitioner and other creditors, recently has disposed and is disposing of all of the crops harvested from said land together with all of the live-stock thereon and has retained, and is retaining the proceeds therefrom exclusively to his own use and benefit;

(q) Debtor has failed and refused to compromise and satisfy said loan of October 1, 1925 on a basis and through sources available to him and acceptable to your petitioner and in other respects has displayed and is displaying an utter lack of the good faith required of him in seeking relief herein;

(9) Under the terms of Section 75 (s), as amended August 28, 1935, as well as in equity and good conscience, your petitioner is entitled to such relief as it may be able to realize upon the above described real estate which was accepted as security for said loan on October 1, 1925, for the following reasons, among others:

(a) That the total amount of debtor's indebtedness to your petitioner, with interest to the date hereof, is in excess of \$14,000.00;

[fol. 27] (b) That by reason of the failure of debtor to pay any taxes assessed against said real estate or insurance premiums thereon since the year 1932, your petitioner has been compelled to pay taxes and insurance premiums thereon in the aggregate amount of \$1500.00, in order to protect said real estate from forfeiture, sale and loss;

(c) That in the foreclosure of said mortgage and other litigation necessarily incident to the protection of its rights in said loan and security, your petitioner has been required to expend large sums for court costs, stenographic fees, attorneys' fees and other expenses for which it has never been or ever will be repaid;

(d) That debtor is financially unable to repay said loan, the accumulated interest thereon, the amounts advanced by your petitioner for taxes and insurance premiums, as aforesaid, or any of the other costs or expenses chargeable against him under the terms of and in connection with said loan;

(e) That your petitioner has received no part of or benefit from the crops produced on and harvested from said land and no rent for the occupancy thereof or the buildings thereon;

(f) That the money loaned by your petitioner, as aforesaid, was thus invested for the benefit of its many policyholders who entrusted their money to your petitioner and are entitled to the protection of this Court;

(g) That under the laws of the States of Ohio and Indiana and other States, your petitioner is required to assure a minimum interest income upon funds invested by it in real estate and other securities and is obligated to protect said investment in accordance with the available laws of the [fol. 28] United States and of the several States thereof and by reasons of debtor's defaults, as aforesaid, the above mentioned loan and security have fallen and remained far below said income requirements.

(h) That by reason of the defaults and acts of debtor, as hereinabove set forth, your petitioner has been and is being

greatly injured and said loan and the value of the security therefor have been and are being seriously depreciated and otherwise jeopardized.

Wherefore your petitioner respectfully prays that an order be entered herein,

(1) Dismissing the above entitled proceeding pending under Section 75(s) of the Bankruptcy Act, as amended August 28, 1935, at least insofar as it affects or involves the above described real estate or said indebtedness of said debtor to your petitioner;

(2) Vacating and setting aside all injunctive or other orders heretofore entered herein or effected by and under said Section 75, as amended, restraining or preventing your petitioner from proceeding under or in accordance with said foreclosure proceedings and for the possession of said property;

(3) Holding null, void and of no force or effect any lease or term of tenancy heretofore executed or extended to debtor herein;

(4) Granting and extending to your petitioner the right of immediate possession to said real estate and directing debtor forthwith to surrender the same;

(5) Declaring and holding valid and of full force and effect the above mentioned deed to said premises issued to your petitioner by the Sheriff of Jay County, Indiana, under date of July 20, 1936; or

(6) In the alternative, directing that an immediate sale of said real estate be had at any early date to be fixed by this Court, all as in said Section 75 (s) of the Bankruptcy Act, as amended provided; and

[fols. 29-30] (7) Granting and ordering such other relief to your petitioner as to this Court shall seem equitable and proper.

Respectfully submitted, The Union Central Life Insurance Company, a corporation, by Arthur S. Lytton, Its Attorney and Agent. Roscoe D. Wheat, Arthur S. Lytton, Attorneys for Petitioner, The Union Central Life Insurance Company.

Duly sworn to by Arthur S. Lytton. Jurat omitted in printing.

[fol. 31] IN UNITED STATES DISTRICT COURT

No. 2073

[Title omitted]

NOTICE

To Roscoe D. Wheat, Counsel for the Union Central Life Insurance Company:

Please take notice that on August 5, 1938, the Debtor will file his motion in said Court at South Bend, Indiana, to dismiss the Creditor's Petition filed herein on June —, 1938.

Dated this 4th day of August, 1938.

Samuel E. Cook, Counsel for Debtor.

[fol. 32] IN UNITED STATES DISTRICT COURT

No. 2073

[Title omitted]

MOTION BY DEBTOR TO DISMISS PETITION OR BILL OF COMPLAINT OF THE CREDITOR FILED HEREIN, JULY 22, 1938—
Filed August 5, 1938

Comes now the Debtor, James M. Wright, and moves the Court to dismiss the creditor's petition and bill of complaint filed herein on the — day of June, 1938, upon the following grounds, to wit:

A

The Petition and Bill of Complaint against said Debtor fails to state facts sufficient to constitute a good cause of action in favor of said creditor and against said Debtor, and does not state any grounds for dismissing the petition and proceedings in Bankruptcy herein.

B

Said Petition and Bill of Complaint does not state facts sufficient to constitute a valid cause of action in Equity against this Debtor, severally or with others; and states no

ground for dismissing the Petition and proceedings in Bankruptcy herein.

C

That it appears on the face of said Petition and Bill of Complaint that the same is wholly without any equity or merit or right.

D

That it is shown on the face of said Petition that to allow it would do a great wrong and injury to said Debtor, and [fol. 33] and deprive him of the right to save his home under the provisions of Subsection (s) of the Federal Bankruptcy Act, of August 28, 1935, and the Act of March 4, 1938, extending it to March 4, 1940.

E

That the Petition does not state facts sufficient to entitle the creditor to any relief against the Debtor herein.

F

That the Petition and Bill fails to state facts sufficient to show the Debtor has violated or is violating any Act of Congress mentioned in said Petition, and especially Section 75 of the Federal Bankruptcy Act and its amended Subsection (s), of August 28, 1935.

G

That it appears on the face of said Petition and Bill that the things complained of therein and alleged causes of complaint are old and stale and that so long a time has elapsed since they took place, that it would be contrary to equity and good conscience for this Court to take cognizance thereof.

H

That as to that part of said Petition which complains about the taxes, interest on said debt and crops on said land, the creditor had an adequate remedy in said Court under said Subsection (s), to have said rental fixed and compel its payment.. That it is not shown in the Petition that said creditor took any steps in said Court to have said rental fixed or to collect the same, and that under said Subsection, said land, said Debtor, and said rents and profits

are at all times subject to the orders and control of said Court and it is not shown that said creditor took any steps to correct the things it complains of in said Petition or to correct the same. And there is nothing therein to show [fol. 34] that it did not consent to said things of which it complains.

I

That it appears by said Petition that the Debtor had filed his Petition in Bankruptcy under Section 75 and its Amendments. That said Subsection (s) of said Act provides how the District Court shall proceed in the administration of said Act and estate. That the things complained of in said Petition are not enumerated therein as causes for the dismissal of said proceedings and are not grounds under said Subsection for the dismissal of said proceedings.

J

That said Petition also fails to show that the Debtor has failed to comply with the provisions of said Subsection (s) or that he has disobeyed any order of the Court made pursuant to said Section or that he is unable to refinance himself on the basis of the appraised value of said real estate within said stay of three years and until March 4, 1940.

K

That the facts set out in said Petition show that said creditor by its actions and litigation against the Debtor, has defeated and prevented him from refinancing, reorganizing and rehabilitating himself on the basis of the appraised value of said land, as intended by said amended Subsection (s).

L

That said Petition shows that said proceedings in Bankruptcy is now pending in said Court under said Subsection and under its control. That under said Subsection he is entitled to the possession of said land for three years and until March 4, 1940. That said Act of Congress must be given a liberal construction in order to give relief to the [fol. 35] "victims of the general economic depression."

That under the decision of the Federal Supreme Court in the Wright Case and other Federal decisions, this Subsection (s) is intended to permit the farmer to reorganize

and refinance himself without selling or leaving his land. That the Petition fails to state facts which would authorize this Court to deprive the Debtor of the benefits of this Act, to refinance himself and save said land.

Wherefore he prays that said Petition and Bill be dismissed with his costs; that said creditor take nothing by said Petition; that said Debtor be given the benefits of said Subsection (s) and that said estate be administered as provided in said Act and for such other further relief as to the Court may seem just and proper.

The Debtor moves the Court to extend time for filing any answer, if he is required to do so, until after the pendency of the above motion is disposed of.

Dated this 4th day of August, 1938.

Respectfully submitted, Samuel E. Cook, Counsel for Debtor.

[fol. 36] STATE OF INDIANA,
County of Huntington, ss:

Samuel E. Cook, being duly sworn on his oath, says, that on August 4, 1938, he mailed a copy of the above notice and motion by Debtor to Hon. Roscoe D. Wheat, at his address in Portland, Indiana, and deposited it in the Post Office in the City of Huntington, Indiana, with proper postage thereon.

Samuel E. Cook.

Subscribed and sworn to before me this 4th day of August, 1938. My commission expires May 29, 1942. Homer E. Bailey, Notary Public. (Seal.)

[File endorsement omitted.]

[fol. 37] IN UNITED STATES DISTRICT COURT

ORDER DENYING MOTION TO DISMISS—September 22, 1938

The Court, having read Debtor's Motion to Dismiss the creditor's petition, and being fully advised therein, now denies the same and orders that debtor shall answer the said creditor's petition within twenty days from date, to which ruling the debtor at the time excepts.

[fol. 38] IN UNITED STATES DISTRICT COURT

No. 2073

[Title omitted]

DEBTOR'S ANSWER TO CREDITOR'S PETITION FILED JULY 22,
1938—Filed October 5, 1938

Comes now James M. Wright, Debtor in the above proceedings in bankruptcy and for answer to the petition of the Union Central Life Insurance Company respectfully represents to the Court the following:

That he is a citizen of the United States, residing on the land described in the creditor's petition herein in Jay County, Indiana within and subject to the jurisdiction of said District Court.

That prior to the filing of his petition hereinafter set out herein he was personally and in good faith engaged in farming said land and residing thereon. That the principal part of his income was derived from farming said land. That he was unable to meet his debts, including said mortgage debt. That said land was improved with a dwelling house and other necessary buildings and he had no other place to reside except in said house on said land.

That since said purchase and the execution of the Creditor's mortgage as set out in its petition, he has invested over \$7000.00 in improving said land and 20 years of hard labor in doing the same.

That said Creditor disregarded the first Acts of Congress enacted June 24, 1934 for the relief of insolvent farmers in its action in the State Courts to deprive the Debtor of his right to a Stay to enable him to finance his debt.

That it continued to litigate him in this Court and he had to appeal to the Circuit Court of Appeals of the 7th Circuit. It followed him there and to the Federal Supreme Court.

[fol. 39] (Wright vs. Union Central Law Ed. Advance opinions Vol. 82 No. 17 pp. 999-1009.)

That Court rejected the theories and actions it had urged, in the lower Courts to deprive him of his rights under said Acts of Congress and held that he was entitled to the benefits of said Acts of Congress, as to said land.

That these actions of the creditor has cost him thousands of dollars, loss of much time and caused him untold worry and anxiety lest he should lose his home and be turned out on the highways and make it utterly impossible for him to refinance himself. That said Creditor is not content with its defeat in the Supreme Court and the damage it has done the Debtor but has filed the petition herein to further harass him and to defeat his rights under said Acts of Congress, to remain in possession of his home and refinance it on the basis of its appraised value. That said debt is now double the value of said land and any attempt to finance it on said basis means the loss of his home and the savings of a lifetime invested therein. That he is not to blame for said situation and said Creditor has no right in a Court of Conscience to take advantage of said situation and confiscate his home. That all of the interest it has in said security is the real value of said land.

2. That the Creditor's petition herein is addressed to this Court as a Court of Bankruptcy which is a Court of Equity. That said petitioner should take nothing on account of the things complained of in its petition for the reasons that said things were allowable under the Acts of the Congress of the United States and that its petition admits that it has violated the maxim:

"That he who seeks equity must do equity."

And the maxim:

"He that hath committed iniquity shall not have equity."

3. That said Creditor admits in paragraph (6) of said petition that the Debtor filed his petition in the Federal District Court on October 30, 1934 under section 75 of the [fol. 40] Federal Bankruptcy Act of March 3, 1933, providing for Agricultural Compositions and extensions for the relief of insolvent farm mortgage Debtors. That the Federal Supreme Court in (Va.) Wright vs. Mountain Trust Bank (March 29, 1937) held in substance that these Acts of Congress were enacted for the purpose of aiding the victims of the general economic depression and that Court in that case and the recent decision in (Ind.) Wright (The Debtor herein) vs. Union Central Life Insurance Company (May 31, 1938) held that Congress had the power to extend the State period of redemption, to allow the Debtor to remain

in possession of his home during the Stay or Moratorium and the right to reorganize himself and refinance himself without selling the land and with the right to redeem his land at the appraised value thereof as provided in paragraph (3) of amended subsection (s) of said section 75, enacted August 28, 1935 and as extended by the Act of March 4, 1938 to March 4th 1940, and with the right of the Court to turn said land over to the Debtor freed of the lien of the said mortgage thereon and be discharged of any deficiency judgment even if it did result in requiring the Creditor to accept the value of its security though it was less than the amount of its debt, or in other words that Congress had the right to modify and affect the Creditors property rights established by State laws.

4. That every part of said petition and other things which were done by it and omitted show that the sole purpose of said petitioner at the time of taking its decree of foreclosure on May 27, 1935 and since then has been to harass the Debtor with needless litigation for the purpose of breaking down said Act of Congress and said amended subsection (s) and thereby deprive the Debtor of his rights under said Acts and to defeat the purpose of Congress to effect a rehabilitation of himself and to redeem said land as provided in paragraph (3) of said Subsection (s).

5. That such conduct is so repugnant to the intent of Congress that the Federal Supreme Court (May 31, 1938) held in the proceedings in the instant case that this Court had the power to restrain said Creditor for such action. [fol. 41] Congress never intended that the insolvent farmer should wage law suits in all of the Federal Courts to be entitled to the benefits of this remedial Act, but it did intend that he should be promptly given these rights and that the creditors should be restrained from going into the State Courts to defeat and nullify the purposes of Congress in this remedial legislation.

6. That in answer to paragraph (3) of said petition which sets up that the creditor obtained a decree of foreclosure in the State Court, sold said land at sheriff's sale and has received a deed, the Debtor says:

This conduct shows it was trying to defeat the Debtor's rights under these Acts of Congress. The petition herein shows that the petition in bankruptcy was filed before the

date of said judgment. That under subsection (n) of said section 75 the filing of said petition in bankruptcy subjected said land to the exclusive jurisdiction of said District Court and hence said State Court had no power to interfere with the possession and control of said land in said Court of Bankruptcy and said decree, sale and deed are null and void and should be set aside and said Creditor should not be allowed to use said actions to defeat these Acts of Congress. That the Federal Courts have held that after the jurisdiction *for* the land vests in the Court of Bankruptcy, the Creditor is not allowed to go into the State Courts and try to better his position and that such a decree is no lien on the land.

7. That after the District Court acquired jurisdiction of said land said decree in the State Court, the sheriff's sale and the deed were all set out in the record in said recent case before the Supreme Court (May 31, 1938) and the creditor set said facts out in its brief filed therein and urged that it had acquired title thereby and that said proceedings in said State Court took said land out of the proceedings in bankruptcy.

8. In further answer to said paragraph the Debtor says, [fol. 42] said Supreme Court paid no attention to such a claim and impliedly held that said facts did not take the land out of the bankruptcy proceedings but that notwithstanding said facts said land was still properly within said proceedings in bankruptcy. Setting up said facts in its petition herein after they were rejected by the higher Courts was a disregard of said decision and is an effort to appeal from said Supreme Court to this District Court. Since said facts were rejected by said higher Court they must be rejected and disregarded herein.

10. That for further answer to paragraph (3) of said petition he says: That prior to and on May 27, 1935, when the creditor obtained said decree of foreclosure, the debtor was the absolute owner of said land and that said decree and the sheriff's sale and deed set out therein did not deprive him of his rights under said first subsection (s) of said section 75, and the Supreme Court has impliedly so held in said recent decision of said Supreme Court and that said actions did not remove said land from the proceedings in bankruptcy herein for the reason after said first subsection, (s) was held void by the Supreme Court in the

Radford Case on May 27, 1935, Congress amended said subsection (s) on August 28, 1935 and by paragraph (5) of said New Act applied said new subsection (s) to all existing pending cases and all cases which had been dismissed because of the decision of the Supreme Court. That in the case at Bar the Court had indirectly dismissed said cause by striking out said land from the schedules and removed it from said bankruptcy proceedings.

That the effect of said paragraph (5) was to bring forward the old case and apply the new subsection to it.

That in answer to paragraph (4) of said petition claiming it acted in good faith and had paid out money for expenses the Debtor says: That said Creditor was bound to know that as the Federal Supreme Court held in said appeal as follows:

[fol. 43] "The mortgage contract was made subject to constitutional power in the Congress to legislate on the subject of bankruptcies" * * * "Not only are existing laws read into contracts in order to fix obligations as between parties, but the reservation of essential attributes of sovereign power is also read into Contracts as a postulate of the legal order."

"And the fact that in this case the purchaser at the foreclosure sale was also the mortgagee is not as a determining factor" * * *

"Bankruptcy proceedings constantly modify and affect the property rights established by State law."

That this means that paragraph (3) of said subsection (s) giving the owner of the land the right to redeem it at its appraised value and discharging him from the debt above said sum is a valid law.

11. That for answer to paragraph (8) of said petition and asking the Court to terminate any further stay or moratorium for the reasons enumerated therein, he says:

Reason (a) complains that he has not repaid any of the principal of said Debt. The relief given by Congress is a stay of three years which has been extended to March 4, 1940 and it does not depend on the payment of the debt. Congress gave the Debtor said stay to enable him to re-finance his debt on the basis of the value of the land and intended to allow him said time to do that. The Act does not provide that failure to pay the principal is a cause of

dismissal or cause to terminate the stay. The intent of Congress was to allow him to remain in possession of the land so that he could rehabilitate himself and reorganize and save his land.

Reason (b) is like (a) and for answer thereto he says: That the failure to pay interest or taxes is not cause to terminate his stay. That he had no income except the crops from said land and on account of low prices for farm products and crop failures the income was not sufficient to pay said sums.

Reason (d) claims that the Debtor has retained all of the crops since the loan was made. Under the law he was [fol. 44] entitled to receive all of them up to the time the land went into the proceedings in bankruptcy. After that time he has paid and satisfied the rent fixed in the proceedings herein for the years 1936-1937 and ready to pay 1938. That the mere failure to pay rent as provided in said Act is not cause for terminating said stay. If it should appear that there is any of said rent unpaid the creditor had an ample remedy to bring said matter before said Court as it has full control over the property at all times.

That it would not be sufficient cause to deprive the right of said Debtor of redeeming said land as provided in said subsection (s). It is not alleged in said petition that any such action was taken by said creditor and from all that appears in said petition it consented to the matter of rent and as the Debtor is informed said creditor has refused to reorganize said Acts of Congress but at all times tried to defeat said Acts and refused to accept any of such rents. That on account of said conduct it does not come into this Court in the right manner to complain of said matter as to said rents.

Reason (e) complains that the Debtor has lived on said land since said loan was made. Under the law the mortgagee has the right to the possession of the mortgaged land and under the Acts of Congress he was entitled to the possession thereof for three years and until March 4, 1940. This is no cause for terminating the stay or denying him the moratorium provided by said Acts of Congress.

Reason (f) claims the Debtor stated that if the Acts of Congress were held valid he would turn over 2/5 of the crops as rent, but if invalid he would retain the same. For answer said creditor at all times refused to be governed by said Acts of Congress and has lawed him for three

years to defeat said Acts and has refused to accept any rent hence it does not come into Court in a proper manner to claim any of the benefits of said Acts or any relief for the things it complains of in said petition. It cannot "Blow hot and cold." It cannot refuse to recognize said Acts of Congress and refused the rent and carry on litigation for [fol. 45] three years to defeat the law and in the next breath claim any of its benefits. It overlooks that if the Act was declared void and there was no such a law it would have no claim to said rents and would have to enforce its rights in some other way.

That such a statement if made would be no cause for ending the stay and defeating the purpose of Congress to allow him to redeem and save his home by paying the value of said security as provided in paragraph (3) of said subsection (s).

Reason (g) sounds rather strange. It complains because he did not redeem from the sales in the State Court and lost other land. The acts of Congress do not require that as a condition precedent to receiving the stay provided in said subsection (s) he must redeem under the State law. It provides for a different redemption from that of the State. According to the latter to redeem he would have to pay the whole debt with 8 per cent interest, while under the Acts of Congress he is allowed to redeem by paying the real value of the land. The creditor knew when it was making that statement that the debt has piled up so high that it would be utterly impossible for him to ever redeem it on that basis. Such a statement is a sham and subterfuge.

Reason (h) sounds stranger still. It complains that the debtor has not paid or been released or discharged of the personal judgment of \$11,975.11. Does it want the land and the above sum too? That should shock the conscience of a Court of Justice.

It does not come into this Court in a proper manner. It has refused to do equity and is not in a position to be entitled to any relief herein. "He that hath committed iniquity shall not have equity." "He who seeks equity must do equity." That these maxims apply only to persons seeking relief in a Court of Equity cannot defeat these Acts of Congress in a Court of Equity and then change its colors and come into the same court and demand the unreasonable things it is asking in its petition.

[fol: 46] Reason (i) sounds strange. It complains that the Debtor has been declared a bankrupt and is insolvent and his liabilities exceed his assets. For answer the Debtor says: That this is no cause why he should not have the benefits of these Acts of Congress. Congress intended by the Acts to give relief to such persons. It is a reason for continuing the stay so that he can rehabilitate himself and save his home and is no reason for ending the stay.

Reason (j) complains that his present income is insufficient to reduce his liabilities. In answer to this: Conceding that is true it is a reason for continuing the stay rather than ending it. He says he can rehabilitate and save his land on the basis of its appraised value. Congress intended the Federal Courts should administer this law so that insolvent farmers could save their homes instead of losing them and the thousands of dollars and years of labor they had invested in them and improving them.

Reason (k) claims that he can not rehabilitate and this Court cannot afford him any relief. To that he answers that from the tenor of the petition the Creditor means he cannot refinance himself on the basis of the present amount of said debt as it is double the value of said land, but that it can be financed on the basis of its real value. That by that plan he will save his home and the Creditor will lose nothing as his debt is only worth the value of said land. Congress intended these Acts should be construed and applied to save farms and to not take them from the owners.

Reason (l) claims the Debtor has made no bona fide offer of Composition and extension and has not complied with section 75. To that he answers that that question was passed and settled at the first creditor's meeting and when the Court allowed him to amend his petition under amended subsection (s) of section 75 passed August 28, 1935. That the reason why the debtor has not paid more on rents and said debt is that the land has depreciated one-half which has doubled said debt. That due to low prices for farm products and crop failures the income from said land has [fol: 47] not been sufficient to pay for his living and current expenses and leaves nothing to apply on said taxes, interest and principal. Besides this said Creditor has ignored said Acts of Congress and scorned them and lawed him for three years and has not cooperated with him to carry out said Acts and has refused to accept any of said rents. That by such conduct it has caused him thousands of dollars of

damages and expenses in resisting said litigation. That it does not come into Court in a proper manner and is not entitled to terminate said stay.

Reason (m) That the things complained of in this reason have been caused by--"The general economic depression." (So designated by the Supreme Court in Wright vs. Mountain Trust Bank) and the persistent efforts of the creditor to defeat these remedial Acts of Congress in the Courts. That thereby it has lost its right to appeal to this Court of Equity for an order which would drive him from his home and cause him to lose his savings of a life-time. Congress never intended such an administration of these remedial Acts for the relief of insolvent farmers. It intended that they should keep their farms and refinance them on the basis of their real value, like, insolvent banks, railroads, factories and other corporations are reorganized under other Acts of Congress which allowed them to keep their properties and start up again. And Congress intended and understood that the only way that the farmer could be reorganized and save his land was to allow him to redeem it on the basis of its real value. That any other plan would defeat the purposes of these remedial Acts and should not be applied by the Courts.

Reason (n) is a repetition of other previous reasons and has already been answered. The creditor had a remedy to take care of the things it complains of and refused to cooperate in carrying out these remedial Acts of Congress.

Reason (o) complains that the Debtor has not kept the land in repair. In answer to that he says that since the [fol. 48] date of the said original loan in 1915 he has expended over \$7000.00 in improving said land, and the buildings, fences, ditches, etc. thereon. That since the filing of his petition in bankruptcy herein he has made all of the repairs possible. Since 1930 the prices for the products of said farm have been so low with failures of crops that it has been impossible to keep up the repair of said farm and the buildings thereon, except that he put a new roof on the dwelling house in 1937 which took the landlord's share of the corn crops for the year 1936.

Reason (p) complains as to crops and is a repetition of the reasons above and has already been answered. That as to the live stock mentioned (if any there be) the creditor has no lien thereon.

Reason (q) claims that the debtor refused to make a settlement of his loan with the creditor. In answer thereto he says that before filing his petition in bankruptcy he made an application to the Federal Land Bank of Louisville for a loan on said 200 acres and it would only allow \$8000.00 and the debt herein was \$9000.00; that when he reported said matter to the agents of said company they refused to accept the loan for said debt. And that he was wholly unable at said time to pay the difference of \$1000.00 and some other costs.

In paragraph (9) the creditor repeats the reasons why the stay should be ended and the Debtor be deprived of the benefits of said Acts of Congress. In answer to each the Debtor says:

Reason (a) is a repetition and has already been answered.

Reason (b) complains of non-payment of taxes and insurance. This is also a repetition and has already been answered.

Reason (c) complains that it has expended money in litigation. To that he says, the recent decision of the Supreme Court (May 31, 1938) shows it has been wrong in resisting these Acts of Congress and thereby has caused him to lose thousands of dollars in time and money and has made it impossible for him to refinance said debt.

[fol. 49] Reason (d) complains that the Debtor cannot pay the whole of said debt. To this he answers that it is no cause which would authorize the Court to end said stay, but is a reason why the Court should order said land reappraised and allow him to redeem said land on the basis of said appraisement. That this statement of the Creditor is not based upon the theory of his right to redeem said land on the basis of its real value.

Reason (e) is a repetition of former reasons and has been already answered.

Reason (f) complains that the money loaned belongs to many policy holders. In answer to that he says this would be no reason to deprive the Debtor of the stay and benefits of these Acts of Congress to retain his land and refinance it on the basis of its real value.

Reason (g) complains that under the laws of Ohio and Indiana and other States the Creditor is required to assure a certain income upon the funds invested and the income of this land has fallen below the requirements. In answer to that he says, that is no cause why he should not

be allowed under the Acts of Congress to save his home and refinance said debt on the basis of its real value as provided in paragraph (2) of amended subsection (s) of August 28, 1935.

Reason (h) is a repetition of others and has already been answered.

Then the petitioner prays that the Court enter an order herein as follows: An examination of the reasons shows scorn and hostility for these Acts of Congress and admits the statements in this answer on that point.

Reason (1) Dismissing the proceedings herein as to said real estate.

That was substantially what was done in the Court below in the proceedings herein and the Supreme Court reversed that in his appeal on May 31, 1938.

[fol. 50] Reason (2) Vacating all injunctions restraining the Creditor from enforcing its foreclosure proceedings and give it the possession of the land. It means that it desires to break down these remedial Acts of Congress, deprive him of the benefits thereof and take his land without giving him the right to redeem it as provided in paragraph (2) of said subsection (s) of section 75.

That the creditor overlooks that it is asking this Court to do things which would defeat these Acts of Congress. And that the Supreme Court in the recent Wright case held the District Court had the power to enjoin a mortgagee's action which would defeat the purposes of section 75 subsection (s) to effect a rehabilitation of the farmer mortgagor.

That the very things it is asking the Court to do in its petition would overthrow these remedial Acts for insolvent farmers and defeat the purpose intended by their passage. "The intent of the lawgiver is the law."

Reason (3) holding null and void the lease existing between the trustee herein. That is a strange position. It first complains about the rents and in the next breath asks the Court to break down the lease which provides for the rent. What inconsistency.

Reasons (4) (5) Embrace the same question. They ask in effect that this Court approve the foreclosure in the State Court and the sheriff's deed issued therein and order the Debtor to leave the land at once. If there was anything else needed to show the creditor's hostility to these Acts of Congress and its purpose to deprive the Debtor of

his right to rehabilitate himself and save his home, this has supplied it. It shows that the Creditor wants to use the State Court to foreclose its mortgage and obtain a title by the sheriff's deed and thereby defeat these Acts of Congress and to force the helpless Debtor to redeem under the State law. Something that never can be done, since the land has gone down and the debt gone up and to thereby use the State law to deprive him of the right to redeem the land under the Federal law at its appraised value and to thereby [fol. 51] defeat the purposes of Congress in enacting these remedial Acts which are the Supreme law of the land and cannot be overthrown by State laws.

Reason (6) This reason further shows a purpose to deprive the Debtor of the right to have the land appraised and the right to redeem it at the appraisement. This part of paragraph (3) of subsection (s) is consistent with the general frame of said Act and purposes of Congress as expressed therein and no difference what the situation may be, it is necessary to apply it in order to carry out the intent of Congress. The failure to do that would nullify and overthrow said subsection and defeat the plain purposes of Congress in enacting it.

Reason (7) That for further answer to the claim that he has not paid anything on said loan or for interest he says that said loan ran for 10 years before it was renewed on October 1, 1925 and he paid in interest thereon the sum of \$7600.00 and that for the next 5 years he paid \$2250.00 in interest on said loan.

That shortly prior to the renewal of said loan in 1925 he built, house, barn and other buildings at a cost of about \$7000.00. That he kept up the taxes on said loan until the depression came and after that the income from the land was not sufficient to pay the taxes and interest on said loan.

Reason (8) That as a further answer to the claim that he did not pay any rent he further says.

That said statement is wholly untrue. That said rent was first fixed and began for the season of 1936. That for that year he turned over to Carmon Alexander the Trustee in this cause 2/5 of the wheat and oats in the sum of \$400.00. That the corn crop belonging to said creditor for 1936 in the sum of about \$350.00 was used to pay for the cost of re-roofing and repairing the dwelling house.

That it was necessary to repair said house to save it.

That for the season of 1937 there was no wheat raised on said land. That 2/5 of the corn is now in the crib on said farm and said Trustee can get it at any time for said creditor.

[fol. 52] That the creditor is entitled to about 740 bushels of the corn crop of 1938. That it is on said farm and has not been gathered and that said trustee can get the same at the proper time.

That the important point about all of said claims about said rent is that said Creditor has stubbornly refused to accept any of it from said trustee, but has relied on its litigation to defeat said Acts of Congress and it has filed said petition herein for said purpose. That the conduct of said Creditor in refusing to accept said rent has deprived it of the right to ask for any of the relief in the petition herein or to complain about the same.

Reason (9) That as a further answer to the claim that he has not paid any interest or taxes since 1932 he says:

That he had no income except from the proceeds of said land. That on account of crop failures and low prices for farm products, he did not derive enough from said land to pay said interest and as to the taxes they must be paid out of said rents and he asks the Court to grant him all of the other relief to which he is entitled under said Acts of Congress.

James M. Wright, Debtor; Cook & Bailey, Atty's for Debtor.

[fols. 53-54] *Duly sworn to by James M. Wright. Jurat omitted in printing.*

[File endorsement omitted.]

[fol. 55] IN UNITED STATES DISTRICT COURT

No. 2073

[Title omitted]

CROSS PETITION OF DEBTOR TO HAVE LAND APPRAISED AND BE ALLOWED TO REDEEM IT AT THE APPRAISEMENT—Filed October 5, 1938

Comes now James M. Wright, the Debtor in said proceedings and respectfully represents to said Court:

That he filed his petition in bankruptcy in said cause on October 30, 1934 under section 75 of the Federal Bankruptcy

Act. That in his schedules attached to said petition he described the real estate in said proceedings and made said creditor The Union Central Life Insurance Company a party and it has often appeared in said cause. That said petition was duly referred to the Conciliation Commissioner of Jay County Indiana. That said reference vested the exclusive jurisdiction and control over said land and said Debtor and said Creditor in the District Court. That he filed his proposal of Composition and extension of time in which to pay said debt. That at the first meeting of Creditors he failed to obtain the consent of a majority in numbers and amounts to said proposal. That he was duly adjudged a bankrupt by said Court and amended his petition under the old subsection (s). That said old subsection was held void by the Federal Supreme Court. That on August 28, 1935 Congress enacted an amended subsection (s) to said section 75 and in paragraph (5) of said Act Congress applied it to all existing pending cases and his petition was pending at said time. That said paragraph also brought forward and reinstated all cases which had been dismissed because of said Supreme Court decision.

That his petition was reinstated in said Court under said amended subsection and he amended his petition under said New Act on October 11, 1935.

That the Federal Supreme Court in an appeal wherein [fol. 56] said Creditor was a party on May 31, 1938 held that said Act was valid and that said 200 acres of real estate as described in his schedules filed herein was properly within the jurisdiction of this Court in said proceedings in bankruptcy.

That the Debtor desires to have the benefits of paragraph (3) of said subsection (s) of August 28, 1935.

That he now requests said Court to cause said real estate to be appraised or to set a date for hearing on said question and after hearing evidence as to its value to fix the value of said land in accordance with said evidence and to enter an order allowing him to redeem said land at said appraisement and to order said land turned over to him free and clear of said mortgage lien and debt.

That he says that said Creditor filed an action in the Adams Circuit Court to foreclose said Mortgage. That judgment was rendered therein after the filing of his peti-

tion in bankruptcy and said land was sold by the sheriff on said decree and said Creditor has obtained a sheriff's deed for said real estate.

That said Adams Circuit Court had no jurisdiction to foreclose said Mortgage and sell said land and thereby deprive the Debtor of his right to redeem it under said Acts of Congress for the amount of its appraised value.

That said debt is now nearly \$15000.00 which is double the real value of said land and hence he cannot be refinanced and he cannot rehabilitate himself on the basis of the whole amount of said debt.

That the only way he can redeem said land is by being allowed to pay the appraised value thereof as provided in said paragraph^b(3) of said subsection (s) enacted August 28, 1935 as extended by the Act of March 4, 1938 to March 4, 1940.

That he has substantially complied with the provisions of said subsection (s) except as he was hindered from doing so by the refusal of said Creditor to recognize said Acts and its refusal to cooperate with him in carrying it out.

[fols. 57-58] . Wherefore he asks the Court to cause said land to be appraised, to enter an order allowing him to redeem said land at said appraisement and that it be ordered turned over to him freed of the lien of said mortgage and discharge him from liability on account of any deficiency judgment and for all other proper relief in the premises.

James M. Wright, Debtor.

Subscribed and sworn to before me this 3 day of
October 1938. Samuel E. Cook, Notary Public.
My Commission expires 3/8/1939.

[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

No. 2073

[Title omitted]

ANSWER OF THE UNION CENTRAL LIFE INSURANCE COMPANY
TO CROSS-PETITION OF JAMES M. WRIGHT, DEBTOR—Filed
October 18, 1938

For answer to Cross-petition of Debtor herein, the petitioner, The Union Central Life Insurance Company, a corporation, says:

1. That Debtor is not entitled to redeem, purchase or acquire the land described in the petition herein or to have same turned over to him free of encumbrances, upon payment of an amount or value fixed by appraisement herein, nor thereby to be discharged from liability on account of any deficiency judgment against him.

2. In its petition herein, petitioner as a secured Creditor having a lien upon said land, requested that this Court direct an immediate sale of said real estate at an early date to be fixed by this Court as in Section 75(s) (3) of the Bankruptcy Act, as amended, provided.

3. That by the terms of said Section 75(s) (3), said written request of petitioner takes precedence over any right given Debtor under said Act to purchase, acquire or have said property turned over to him, at the amount of any appraisal thereof, free and clear of all encumbrances.

[fols. 60-61] 4. That by reason of the several matters and things in said petition contained and which by reference are incorporated herein, Debtor is not entitled to any further relief under said Section 75(s) with respect to the property described in said petition.

Wherefore, petitioner prays that the prayer of said Cross-petition be denied.

Virgil D. Parish, Roscoe D. Wheat, Arthur S. Lytton,
Attorneys for Petitioner, The Union Central Life
Insurance Company, a Corporation, 134 North
LaSalle Street, Chicago, Illinois.

[fol. 62]

IN UNITED STATES DISTRICT COURT

No. 2073

[Title omitted]

DEBTOR'S AMENDMENT TO ANSWER TO CREDITOR'S PETITION—
Filed October 19, 1938

Comes now the Debtor, James M. Wright and files an addition and amendment to his answer to the creditor's petition herein filed October 5, 1938, as follows:

That to further harass the Debtor said creditor on or about — —, 1938, filed its petition or complaint in the Adams Circuit Court of Adams County, Indiana, for a writ of assistance to exclude the Debtor from the 200 acres of land herein.

That said Debtor set up the defense of bankruptcy. That said petition was heard in said Court and judgment was rendered against said Debtor that he should be excluded from said land.

That the Debtor was compelled to and did appeal from said judgment to the Supreme Court of said State which erroneously affirmed said judgment on October 26, 1937 and said creditor was threatening to execute said judgment and remove him from said land. That he was compelled to go to the expense of filing a petition in the Circuit Court of Appeals of the 7th Circuit and after said Circuit Court of Appeals had decided against the Debtor in his appeal from the District Court he was compelled to file a petition therein to stay the mandate in said cause. Both of which were granted by said Court of Appeals.

That prior to said time said creditor had filed its petition before the Conciliation Commissioner of Jay County, Indiana, to strike said 200 acre tract from the schedules in the proceedings in bankruptcy.

[fol. 63] That this compelled the Debtor to go to great expense to appeal from said decision to the Judge of said District Court by filing a petition for a review, of the order of said Conciliation Commissioner in striking said real estate from the Debtor's schedules herein.

That in said District Court the Debtor filed his application and amended application for leave to amend said schedules and asked the Court to reinstate his real estate in said schedules. The creditor resisted said application

and said District Court erroneously approved said action of said Commissioner in striking said real estate from said schedules in bankruptcy and denied both his applications to amend said schedules.

That this action of the District Court compelled him to go to great expense in appealing from each of said orders of said District Court to the Circuit Court of Appeals of the 7th Circuit.

That in said Court said creditor tried to have said appeals dismissed and resisted an order to consolidate them.

That it filed several briefs in support of said erroneous ruling of said District Court. That said appeals were set down for oral argument on June 24, 1937.

That shortly before the case was called for argument the creditor filed a brief of 19 pages in which it upheld the decision in the District Court and cited the erroneous decision of said Circuit Court of Appeals in the Lowman Case, 79 Fed. (2d) 887, and contended that Congress had no power to extend the period of redemption, provided by the State law; that amended Subsection 75, enacted August 28, 1935, was void and that the Debtor's real estate was not carried into the proceedings in bankruptcy and that he was not entitled to the benefits of said Act of Congress. That said Creditor had not presented said question in the record prior to the filing of said brief just prior to said argument. Hence said Debtor did not have a fair chance to argue said [fol. 64] question or said Lowman Case. That on July 3, 1937, even after the Federal Supreme Court on March 29, 1937, in (Va.) Wright case had held said Act of Congress of August 28, 1935, valid, said Circuit Court of Appeals erroneously followed said Lowman Case instead of following said Supreme Court decision and held that Congress had no power to extend said period of redemption and that said Act gave the Debtor no relief.

That this action compelled the Debtor, in order to save his home, to go to great expense and worry and anxiety to petition to the Supreme Court of the United States for a Writ of Certiorari. That the Creditor resisted the petition for such a Writ but it was granted by said Court.

That much time, labor and expense was required in preparing the record for said Supreme Court and preparing briefs therein.

That said Creditor did not stop its resistance to said remedial Acts of Congress enacted: "to aid the victims of the

general economic depression," (so declared by said Supreme Court in said (Va.) Wright Case) but doubled its energies to overthrow said Act of Congress and defeat the purposes of that body in enacting said Subsection (s).

That it filed a brief of 51 pages resisting said Acts of Congress and resisted the same in its oral argument. That on May 31, 1938, said Supreme Court handed down its opinion in said Cause and held in substance as to the real estate herein that Congress had the power to extend said year of redemption; that the State laws could not restrict the power; and that Congress in the exercise of its authority over the subject of bankruptcies had the power to modify and affect the property rights established by State law and that the mortgage contract was subject to the power of Congress to legislate on the subject of bankruptcies, and that this law was written and read into the Creditor's contract herein and said Court rejected the erroneous doctrine of [fol. 65] said Lowman Case and thereby overruled it.

This sweeping decision showing that these Acts of Congress enacted for the relief of insolvent farmer debtors should be given effect and that this Debtor had the right to remain on his land for three years (and now extended to March 4, 1940) and to reorganize and rehabilitate himself and the right to handle his debt without selling his home, should have been enough to check the destructive tendencies of said Creditor, but it did not satisfy it.

On July —, 1938, it prepared and filed a long petition in this Court against the Debtor, charging him with doing many false things and praying that the Court refuse to give him the benefits of this Act of Congress and that it sell his land (at public auction) which means: That this would deprive him of the right to rehabilitate himself and save his home and also deprive him of the right as provided in paragraph (3) of said Subsection (s) to have said land re-appraised with the right to redeem at its appraised value and have the Court, as provided therein, turn it over to him free of said mortgage debt.

That the Supreme Court in said recent (Ind.) Wright decision, (82 L. Ed. U. S. 999) held that this District Court has the power to restrain such action as set out above which would defeat the purpose of Subsection (s) of Section 75 to effect rehabilitation of the farmer mortgagor, citing Wright vs. Vinton Branch, 300 U. S. 470.

The Debtor now charges that his "long train" of resistance to these remedial Acts of Congress—"evinces a design" to overthrow them and deprive him of the benefits of the same and to defeat the purposes of Congress in enacting them which was to save farm homes and not confiscate them.

That instead of denying him of the benefits of these acts and ordering his home sold at public auction, this Court [fol. 66] should enter an order herein restraining said creditor from interfering with his right to rehabilitate himself.

That after the Creditor has carried on this long resistance to deprive the Debtor of his rights under this Act of Congress and has refused to recognize said Acts and refused to accept the rent for said land as provided in said Act and as fixed in this Cause, it cannot now ask this Court to use this Act (which it has repudiated and scorned) to sell his land at public auction, and thereby confiscate his home and the savings of a life-time. That it now knows that its debt is double the appraised value of said land. That at such a sale it intends and will bid the amount of said debt and that means it would be utterly impossible for him to refinance said debt on said basis and redeem from such a sale. That said Creditor also knows that said Debtor cannot save his home and rehabilitate himself like a corporation is reorganized under the Acts of Congress (as held in the (Va.) Wright Case) except by having said land appraised as provided in said Act and fixing the value thereof so that he can redeem said land by paying said appraisement into Court during said moratorium and Stay.

That this Court should restrain any further action of said Creditor to defeat the purposes of Congress and deprive him of the right to rehabilitate himself, to have said land appraised, to allow him to redeem on the basis of *of* said appraisement and all of the other benefits of said Act and deny its petition to sell said land.

That the Creditor nor Court cannot anticipate that the Debtor cannot rehabilitate himself during said moratorium.

That the Debtor can so rehabilitate himself in said Creditor lets him alone in the Courts and stops resisting these Acts of Congress.

On account of the above acts said creditor is not in a position to ask that these proceedings be stopped and that [fol. 67] said land be taken from the Debtor.

Wherefore he prays that said Creditor take nothing by its petition and that the Court order the Referee to proceed.

with the administration of said estates as provided in said Acts of Congress.

James M. Wright.

Subscribed and sworn to before me this 19th day of October, 1938. Samuel E. Cook. (Seal.) Com. Ex. 3-8-1939.

[fol. 68] IN UNITED STATES DISTRICT COURT

MINUTE ENTRY—October 21, 1938

Come now the parties herein and a hearing is had on the Creditor's Petition and the Debtor's answers thereto heretofore set out herein, and now the hearing is continued.

[fol. 69] IN UNITED STATES DISTRICT COURT

No. 2073

[Title omitted]

DEBTOR'S APPLICATION FOR LEAVE TO AMEND HIS VERIFIED ANSWER FILED OCTOBER 5TH, AND 19, 1938—Filed January 3, 1939

Comes now Samuel E. Cook, Counsel for the Debtor in said cause and respectfully represents to the Court that in the hurry of the preparation of the Debtor's answers to the petition herein he overlooked adding a clause that said matters set out in the Creditor's petition herein, in his opinion, had been adjudicated by the final judgment of the Federal Supreme Court in the case of Wright vs. The Union Central Life Insurance Company decided May 31, 1938 between the same parties in said Bankruptcy proceedings as are in the petition filed herein on July 22, 1938. That said omission was not intentional or for delay. That since the hearing of evidence on said petition affiant has been very busy in the general practice of law and in advising clients in farm mortgages cases in his office and filing papers in this District Court and in presenting cases and taking appeals in the District Court for the Southern District of Indiana

and did not have the time to prepare such an amendment to said answer.

That in his opinion such an answer would conform the pleading to facts shown at said trial.

That the statutes of Indiana which would control under the Federal Conformity Act as to the rules of pleadings in the absence of an exact Federal provision, provides in [fol. 70] substance that after the trial and before final judgment the Court may in its discretion * * * for the furtherance of justice order any pleading to be amended * * * in any respect * * * in order that the pleadings may conform to the facts proved * * *.

Wherefore he asks leave to amend said answers as set out above and tenders and files said amendment herewith.

That in justice and right the Debtor should be granted this leave to amend said answer in the manner set forth above.

Samuel E. Cook, Counsel for Debtor.

Duly sworn to by James M. Wright. Jurat omitted in printing.

[File endorsement omitted.]

[fol. 71] IN UNITED STATES DISTRICT COURT

[Title omitted]

No. 2073

AMENDMENT OF RES JUDICATA TO DEBTOR'S ANSWERS—January 3, 1939

Comes now James M. Wright and filed the following amendment to his answer to the creditor's petition herein namely:

That said proceedings in bankruptcy were pending in said District Court on July 29, 1936. That on said date said petitioner The Union Central Life Insurance Company, filed its petition in said Court to strike out and remove from the schedules the 200 acre tract of real estate described in said petition. That said petition was referred to Byron G. Jenkins, Conciliation Commissioner and Referee of Jay County, Indiana, the County wherein said Debtor resided and said

real estate was located. That afterwards on December 2, 1936, said Conciliation Commissioner made his report to said Court and recommended that said real estate be stricken from said schedules.

That afterwards on December 10, 1936 said Debtor filed his petition and took all of the steps necessary to review in said District Court said decision of said Conciliation Commissioner and Referee. That afterwards such proceedings were had in said Court and cause that said Court overruled and denied said petition for review and approved the recommendation of said Commissioner and struck said real estate from said schedules with exception to said Debtor and [fol. 72] said Debtor prayed an appeal from said decision to the Circuit Court of Appeals for the Seventh Circuit sitting at Chicago, Illinois which appeal was granted and designated as 6183.

That afterwards on December 23 and December 31, 1936 said Debtor filed his applications in said Court to amend said schedules as to said real estate described in the petition herein.

That afterwards said Court denied said applications to amend with exceptions.

That afterwards said Debtor took the steps necessary to appeal said cause to the United States Circuit Court of Appeals for the Seventh Circuit sitting at Chicago, Illinois which was granted and designated as 6184.

That the transcript of the papers and proceedings in both of said Appeals were duly transmitted, filed and docketed in said Circuit Court of Appeals.

That afterwards said appeals were consolidated and heard as one case in said Court. And said Creditor appeared in said causes in said Court. That afterwards said Circuit Court of Appeals affirmed the judgment of said District Court and held there was no error in striking said real estate from schedules in 6183 and that there was no error in denying said applications to amend said schedules and the motion to reinstate said real estate in said schedules in No. 6184.

That such further proceedings were had in said causes that said Debtor filed his petition in the Supreme Court of the United States for a writ of certiorari in both of said causes to said Circuit Court of Appeals. That due notice was given said creditors and said Supreme Court granted

said petition and ordered said causes to be sent up to said Supreme Court.

That said Court of Appeals sent the transcript of the record in both of said causes to said Supreme Court which records were duly filed on January 14, 1938 in the office of [fol. 73] the Clerk of said Court and said causes were duly docketed in said Supreme Court as follows:

SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1937

No. 715

JAMES M. WRIGHT, Petitioner,

vs.

UNION CENTRAL LIFE INSURANCE COMPANY

No. 716

JAMES M. WRIGHT, Petitioner,

vs.

UNION CENTRAL LIFE INSURANCE COMPANY

That the records in said cause were duly printed as required by the Rules of said Court.

That said Appellant prepared and filed his briefs as required by the Rules of said Court and said Appellee, The Union Central Life Insurance Company appeared and filed its briefs therein.

That said cause was duly submitted to said Court and set for argument and was orally argued therein by Counsel for Appellant and Appellee on April 6, 1938.

That afterwards on May 31, 1938 said Supreme Court delivered its opinion and judgment in said cause reversing said Court of Appeals as to said 200 acre tract and holding (among other things) that said real estate was properly in the schedules in said cause and in said proceedings in bankruptcy, and that said Circuit Court of Appeals erred in striking it out. And also held that subsection (s) of section 75 of the Bankruptcy Act enacted August 28, 1935 was constitutional and that Congress had the power to extend his right to redeem said land from said Mortgage debt until March 4, 1940 and that said Debtor under said subsection (s) and its extension had the right to remain in possession

of said land for said period on the payment of a reasonable rental and was given until last-named date to refinance and rehabilitate himself. That said judgment is reported in 82 L. Ed. Adv. Op. 1001-1009 and is binding on said Creditor. That it estops said creditor not only as to every ground of recovery set out in its petition to strike out said land filed in said District Court in July 29, 1936 but it also settles every other ground of action which might have been presented in said petition. That having selected one ground or cause as to why said land should be stricken from said schedules, it waived and lost all others and now has no right to relitigate said grounds in its new petition filed herein on July 22, 1938. That each and every ground or cause of complaint against said debtor set out in said last-named petition existed at the time of the filing of the same and could have been included therein and hence in law were included therein. That said judgment is as conclusive as to said omitted grounds as though they never had existed. That said judgment is final and conclusive on all of the matters set forth in its new petition. That under the decisions of the Federal Supreme Court said Creditor had no right to split up its case and omit part of its complaint against said Debtor and later attempt to use said omitted grounds as a basis for a second or third trial against said Debtor.

Wherefore the Debtor prays the Court to find that said Creditor is bound and precluded by said judgment from relitigating said grounds of complaint against said Debtor and that said matters set out in its petition of July 22, 1936 to deprive the Debtor of the benefits of said Bankruptcy Act of August 28, 1935 and its extension having passed into judgment against the present position of said Creditor, the same cannot be brought into litigation again between said parties and to hold that said Creditor take nothing by its petition herein and that the Debtor have his costs and all other proper relief in the premises.

Samuel E. Cook, Counsel for Debtor.

[fol. 75] IN UNITED STATES DISTRICT COURT

ORDER OVERRULING OBJECTION—January 6, 1939

Comes now The Union Central Life Insurance Company, by its attorney, Arthur S. Lytton, and objects to the amend-

ment of debtor's answer res adjudicata, and now the Court overrules the objection, to which ruling the Creditor, The Union Central Life Insurance Company, excepts.

IN UNITED STATES DISTRICT COURT

Findings of Fact and Conclusions of Law—January 30, 1939

The Court, having heard the argument of counsel and being duly advised in the premises, now finds the following facts:

FINDINGS OF FACT

1. That petitioner owned and held a first mortgage dated October 1, 1925, in the principal amount of \$9000.00 upon the property described in its petition herein; that by decree entered May 27, 1935, in the Circuit Court of Adams County, Indiana, said property was ordered sold to satisfy the indebtedness to petitioner secured by said property and for which a personal judgment was therein entered against debtor; that a sale of said property was had on July 20, 1935, and a Sheriff's certificate of sale was issued to petitioner; that, there being no redemption from said sale, a Sheriff's deed for said property was issued to petitioner on July 26, 1936.

2. Debtor's amended petition under Section 75 (s) of the Bankruptcy Act, as amended August 25, 1935, has been pending since it was filed herein on October 11, 1935.

3. Debtor has not, at any time, made an offer of composition or extension herein, as provided by said Bankruptcy Act, as amended.

[fol. 76] 4. On or about October 30, 1935, Carman Alexander, Trustee herein, entered into a lease with debtor whereby the latter was permitted to remain in possession of said property upon condition that two-fifths of all crops harvested thereon be paid and delivered to said Trustee or his nominee.

5. In December, 1936, the Trustee herein demanded the share of crops due under the terms of said lease theretofore entered into with debtor but that debtor refused to turn them over at that or at any time unless the law (Section 75 (s), as amended August 25, 1935, was held valid.

6. In 1937 no crops were delivered to the Trustee.
7. The total present indebtedness of debtor to petitioner secured by said mortgage amounts to \$15,903.68.
8. No part of the principal amount of said indebtedness has been repaid by debtor since said loan was made October 1, 1925.
9. No taxes assessed against said property for any year since 1929 have been paid by debtor.
10. No interest on the indebtedness secured by said property for any year since 1930, has been paid by debtor.
11. The buildings on said property are in a bad state of repair.
12. The amount of \$7000.00 alleged in debtor's answer to the petition herein to have been expended by debtor to improve said property, was in fact thus expended by him twelve or fifteen years ago.
13. That taxes and insurance on said property since 1929 have been paid by petitioner, The Union Central Life Insurance Company.
14. The value of said property is \$6000.00.
15. Said property is farmed by debtor, his son and son-in-law and they all live thereon.
- [fol. 77] 16. Neither debtor, his son nor son-in-law has any income other than that realized from farming said property.
17. The total income from said property in its best year (1936) was slightly in excess of \$2000. and in its worst year (1937) was approximately \$200.
18. Debtor admits that he could not refinance said property at an appraised value thereof in excess of \$6000., and there is no evidence of his ability to effect said refinancing at that amount.
19. The usual basis of loans made by loaning companies is one-half of the value at which they appraise the property upon which the loan is to be made.
20. In 1934, petitioner offered to accept \$8000. in full of the indebtedness secured by said real estate and has never refused to accept \$8000. or \$8500. therefor.

21. Except for a portion of the 1936 crops delivered to the Trustee herein, debtor has sold and retained the entire proceeds of all crops harvested on said land since said loan was made and has paid nothing therefrom for taxes, interest or insurance since 1930:

22. Debtor's income is grossly insufficient to enable him to reduce or liquidate in any substantial degree his outstanding liabilities or to pay current interest thereon, current taxes against said property and insurance on the buildings located thereon.

23. There is no evidence herein upon which may be based a reasonable hope or expectation of debtor's financial rehabilitation.

24. There is no evidence herein of compliance by debtor with the requirements of said Section 75 (s).

25. Debtor has failed and refused to obey the orders of this court in the matter of making payments semi-annually.

26. In and by its petition herein, petitioner, as a creditor [fols. 78-79] secured by and having a lien on the property described in said petition, has made written request for a public sale of said property.

CONCLUSIONS OF LAW

Upon the foregoing findings of fact, the Court concludes the law to be as follows:

1. The law is with Petitioner.
2. Petitioner's request for a public sale of said property should be and is granted.

To all of which, both the findings of fact and conclusions of law, debtor is granted an exception.

Thos. W. Slick, Judge, U. S. District Court.

January 30, 1939.

[fol. 80] IN UNITED STATES DISTRICT COURT FOR THE NORTH-
ERN DISTRICT OF INDIANA, FORT WAYNE DIVISION

No. 2073

Proceedings Under Section 75 of Bankruptcy Act, as
Amended

In the Matter of JAMES M. WRIGHT, Debtor

JUDGMENT—February 11, 1939

Come now the debtor, James M. Wright, in person and by counsel and the petitioner, The Union Central Life Insurance Company, a corporation, by its counsel, and this cause having been brought on to be heard upon the petition of said petitioner, the answer, as amended, thereto of said debtor, the cross-petition of said debtor and the answer thereto of said petitioner, and the Court having heard the evidence and arguments of counsel and having rendered its special findings of fact and conclusions of law thereon and having filed the same herein, the Court now and hereby renders its judgment on said findings and conclusions as follows:

It Is Hereby Ordered, Adjudged and Decreed that the following described real estate located in Jay County, Indiana;

The Southeast Quarter (SE $\frac{1}{4}$) of Section thirty-one (31), Township twenty-four (24) North, Range thirteen (13) East, and the Southeast Quarter (SE $\frac{1}{4}$) of the Southwest Quarter (SW $\frac{1}{4}$) of Section thirty-one (31), Township twenty-four (24) North, range thirteen (13) East, containing in all two hundred (200) acres, more or less.

be and the same is hereby ordered sold at public sale to the highest bidder and for cash, without any relief whatever from valuation and appraisement laws.

It Is Further Ordered that William D. Rimmel, be and he is hereby appointed Trustee to execute this order and make sale of said real estate and his bond is fixed in the sum of \$250.00.

[fol. 81] It Is Further Ordered that the said Commissioner give public notice of the time, place and terms of such sale

by previously publishing the same at least once a week for four successive weeks in a newspaper of general circulation, printed and published in Jay County, Indiana and by posting at least five like notices of said sale in Jay County, Indiana, three of which shall be posted in the township wherein said real estate is situated.

It Is Further Ordered that said petitioner, or any party to this cause, may become purchaser at said sale and that if petitioner shall be the purchaser at said sale, in making payment of the purchase price thereat, petitioner shall be entitled to utilize and be given credit for all or any part of the indebtedness of debtor to it as heretofore found by this Court.

It Is Further Ordered that upon such sale being made said Trustee shall execute, issue and deliver to the purchaser of said real estate a certificate of sale, evidencing such purchase, describing the premises purchased, the amount paid therefor, or, if purchased by petitioner, the amount of such bid and the time when such purchaser will be entitled to a deed for said premises if the same be not redeemed according to Section 75 (s) of the Bankruptcy Act, as amended.

It Is Further Ordered that thereupon said Trustee shall report his doings in the premises to this Court and upon approval thereof, if the property sold at such sale be not redeemed by debtor within the time and in the manner allowed and provided by said statute, said Trustee, or his successor in office, upon production of the certificate of sale aforesaid, by the purchaser, his, her or its heirs, successors or assigns, shall execute, issue and deliver to the legal holder thereof a deed of conveyance of the premises in such certificate described; and said debtor and all persons claiming [fols. 82-83] under him, or either of them, shall be forever barred from all equity of redemption and claim of, in and to said premises and every part and parcel thereof, which shall have been sold as aforesaid and which shall not have been redeemed according to said statute.

It Is Further Ordered, Adjudged and Decreed that upon the execution and delivery of the deed as aforesaid, the grantee, his, her or its heirs, successors and assigns, be let into immediate possession of the premises so conveyed and that debtor and any and all persons claiming under him who may be in possession of said premises or any part thereof and any person who, since the commencement of the

above entitled proceeding, shall have come into possession of said premises or any part thereof, shall upon production of said Trustee's deed and a certified copy of this order, forthwith surrender possession thereof to such grantee, his, her or its successors or assigns.

The exception of debtor to the foregoing order is hereby noted and entered.

Dated: Feb. 11, 1939.

Enter:

Thos. W. Slick, Judge.

[fol. 84] IN UNITED STATES DISTRICT COURT

No. 2073

[Title omitted]

DEBTOR'S PETITION FOR AN APPEAL—Filed March 8, 1939

Comes now James M. Wright, Debtor and Appellant in said cause and says; that he is aggrieved by the decision, orders and judgments of said District Court rendered in said cause on February 11, 1939 in ordering that the following real estate situated in Jay County, Indiana, described as follows, to-wit:

The Southeast quarter (SE $\frac{1}{4}$) of Section thirty-one (31), Township twenty-four (24) North, Range thirteen (13) East, and the Southeast quarter (SE $\frac{1}{4}$) of the Southwest Quarter (SW $\frac{1}{4}$) of Section thirty-one (31), Township twenty-four (24) North, range thirteen (13) East, containing in all two hundred (200) acres more or less.

—be and the same is ordered sold at public auction to the highest bidder for cash and that William D. Remmel be appointed, Trustee to make said sale and execute said order. That said Commissioner give Notice of said sale for four weeks and posting notices in said County. That the Creditor [fols. 85-86] herein should have the right to bid the amount of the mortgage debt. That the Trustee execute a certificate of sale to the purchaser and a deed for said land if there is no redemption within 90 days from the date of such sale, and that the debtor be barred from all equity of redemption and claim to said land and that upon the

delivery of such deed the grantee at said sale be let into immediate possession of said land and the debtor forthwith surrender said land to said grantee.

And said Debtor hereby appeals from said decision, orders and judgments of said District Court to the United States Circuit Court of Appeals, for the Seventh Circuit, sitting in the City of Chicago, Cook County, Illinois, 1210 Lake Shore Drive, on the assignment of errors filed herewith.

He prays the Court to grant and allow said appeal and that the Court order the Clerk of this Court to prepare a transcript of the record and proceedings in said cause upon which said orders and judgments are based, duly authenticated, and transmit the same to the Clerk of said United States Circuit Court of Appeals, for said Circuit to the end that said appeal be docketed in said Court, provided by law and that the Court issue a Citation for said Appellees to be and appear in said Court on a day certain to answer said appeal as provided by law.

Dated this 7th day of March, 1939.

James M. Wright, Debtor. Samuel E. Cook, Counsel for Debtor.

[File endorsement omitted.]

[fol. 87] IN UNITED STATES DISTRICT COURT

No. 2073

[Title omitted]

DEBTOR'S ASSIGNMENT OF ERRORS—Filed March 8, 1939

Comes now James M. Wright Appellant in said cause and makes and files the following assignment of errors upon which he will rely in the prosecution of his appeal from the orders and judgment of said district court to the United States Circuit Court of Appeals for the Seventh Circuit, entered by said District Court on February 11, 1939, as follows to-wit:

1. The Court erred in overruling Debtor's Motion to dismiss the Creditor's petition and bill of complaint filed about July 22, 1938 for the following reasons:

A. The petition and bill of complaint against said Debtor fails to state facts sufficient to constitute a good cause of action in favor of said Creditor and against said Debtor and states no grounds for dismissing petition and proceedings in bankruptcy herein.

[fol. 88] B. Said petition and bill of complaint does not state facts sufficient to constitute a valid cause of action in equity against this Debtor severally or with other defendants and no ground for dismissing the petition and proceedings in bankruptcy herein.

C. That it appears on the face of said petition and bill of complaint that the same is wholly without any equity, merit or right.

D. That it is shown on the face of said petition that to allow it would do a great wrong to said Debtor, deprive him of the right to save his home under the provisions of subsection (s) of the Federal Bankruptcy Act of August 28, 1938 and the act of March 4, 1938 extending it to March 4, 1940.

E. That the petition does not state facts sufficient to entitle the Creditor to any relief at all.

F. That the petition and bill fails to state facts sufficient to show the Debtor has violated or is violating any act of Congress mentioned in said petition and especially Section 75 for Federal Bankruptcy Act and amended subsection (s) of said section 75 enacted August 28, 1938 for agricultural compositions, extensions and relief of farm mortgage Debtors, commonly called the Frazier-Lemke Moratorium Act.

G. That it appears on the face of said petition and bill that the things complained of therein and alleged causes of complaint are old and stale and that so long a time has elapsed since they took place and happened that it would be contrary to equity and good conscience for this Court to take cognizance thereof.

H. That as to that part of said petition which complains about the taxes, interest on said debt and the crops on said land, the Creditor had an adequate remedy in said subsection to have said Court fix the rental value of said land and compel its payment. That it is not shown in the petition

[fol. 89] that said Creditor took any steps in said Court to have said rental fixed or to correct the same. Also that under said subsection (s) said land, said Debtor, said rents and benefits are at all times subject to the orders and control of said Court and it is not shown that the Creditor took any steps to correct the things it complains of by requesting the action and orders of said Court to correct said matter and there is nothing therein to show that it did not consent to the same.

I. That said petition shows the Debtor invoked the benefits of the section 75 of the Bankruptcy Act and its amended subsection (s) of August 28, 1935. That said subsection (s) provides how the District Court shall proceed in the administration of said estate. That the things complained of in said petition are not enumerated therein as causes for the dismissal of said proceedings and are not grounds under said subsection for the dismissal of said proceedings.

J. That said petition fails to show that the Debtor has failed to comply with the provision of said subsection (s) of August 28, 1935 or disobeyed any orders of the Court made pursuant to said subsection or that he is unable to refinance himself on the basis of the appraised value of said estate within said stay of three years and the extension of said Act to March 4, 1940.

K. That the facts set out in the petition show that said Creditor by its actions and continuous litigation against the Debtor has defected and prevented the Debtor from refinancing, reorganizing and rehabilitating himself on the basis of the appraised value of said land as intended by said amended subsection (s) of said section 75.

L. That said petition shows that said proceedings in bankruptcy is pending in said Court under said subsection (s). That under said subsection the Debtor is entitled to the possession of said land for three years and until March 4, 1940. That said Act of Congress must be given a liberal construction in order to give relief to the "victims of the [fol. 90] general economic depressions." That under the decisions of the Federal Supreme Court in the instant case (Wright vs. Union Central etc. May 31, 1938) and other Federal decisions. This law is intended to permit the farmer to reorganize and refinance himself without selling his land.

That it is an Act to save homes and must be construed in that light.

That the petition fails to state facts which would authorize this Court to deprive the Debtor of the benefits of this Act and give him until 1940 to rehabilitate himself and save his home.

2. That the Court erred in not finding that said Creditor take nothing by its petition and in not giving the debtor the benefits of the Acts of Congress, being amended subsection (s) of section 75 and its amendment on March 4, 1938:

3. That finding No. 3 to the effect that the debtor made no offer of composition and extension is not sustained by sufficient evidence.

4. That said finding No. 3 is contrary to law in this: (a) The evidence shows that Roscoe D. Wheat, Counsel for said Union Central Life Insurance Company was present at the first meeting of Creditors representing said Insurance Company which was held December 12, 1939 and it had been duly notified of said meeting and heard all of the proceedings at said meeting and he did not make any objection to the offer made by said debtor. That said Conciliation Commissioner proceeded with said hearing and examined said debtor and heard said case and afterwards reported to said Court that—"No conciliation adjustment or settlement" was perfected by your Commissioner."

(b) But said Commissioner did not report any objection of said Counsel for said Insurance Company to any of the proceedings before said Commissioner and did not object that said Commissioner had no jurisdiction of said cause and did not state that said debtor had failed to make a proper offer of composition and extension of time to his [fol. 91] creditors at said meeting.

(c) That the evidence further shows that afterwards on December 19, 1934 said debtor filed in said Court his amended petition under subsection (s) of the act of August 28, 1935 and asked to be adjudged a bankrupt.

That said Insurance Company was in Court from the date of the first Creditor's meeting and hence, had notice of the filing of said petition and it made no objection that said Court had no jurisdiction of said cause.

(d) That the evidence further shows that said petition was referred to William B. Duff, Referee in bankruptcy of said Court and on May 2, 1934 he entered an order in said cause declaring and adjudging said debtor a bankrupt. That said Insurance Company knew of said order and made no objection that said Court did not have jurisdiction of said proceedings.

(e) That on January 2, 1936 said Union Central Life Insurance Company appeared to said action in said Court and filed a motion to dismiss said proceedings in bankruptcy and release said real estate from the schedules and custody of this Court, and stated as ground for said dismissal and striking out said real estate that said section 75 (s) of August 28, 1935 was unconstitutional. That it admitted there had been a composition by stating:

The Act in question provides for a composition that may reduce the amount of the lien of a secured creditor, notwithstanding such creditor might be willing to make a higher offer for the property.

(f) That it made other numerous objections to said subsection (s) but made no objection that said Court had no jurisdiction of said cause or that said land was not in said proceedings in bankruptcy but frequently admitted it was.

(g) That said Court did not grant said motion and said cause continued to remain on the docket in said Court.

[fol. 92] (h) That said Union Central Life Insurance Company again on July 29, 1936 waived and admitted said Court had jurisdiction of said cause by filing a second motion and petition in said Court for an order to strike out from the schedules said real estate and that said Conciliation Commissioner and the trustee be ordered to release all control over the same. The Court did not grant this motion but allowed the cause to remain on the docket and said real estate to remain in said schedules and proceedings.

(i) It further appears the Court erred in overlooking that the evidence shows that the debtor filed his verified answer to said motion to dismiss and strike said real estate from said schedules and in said answer stated:

That he filed his petition and Schedules under Section 75 of the Bankruptcy Act in the United States District Court

for the Northern District of Indiana, Fort Wayne Division, on the 30th day of October 1934; that said cause was referred to Byron G. Jenkins, Conciliation Commissioner of Jay County, Indiana; that all the steps under said Section 75 were taken; that later petitioner amended his petition under Subsection (s) of Section 75, as amended August 28, 1935, and he was duly adjudged a Bankrupt.

That said motion and answer was heard by said Commissioner and said parties stipulated as follows:

By agreement of counsel, R. D. Wheat, Attorney for Union Central Life Insurance Company, and Cook & Ashcraft, attorneys for debtor, all evidence to be submitted to the commissioner are the admitted allegations in the verified motion by Union Central Life Insurance Co., and the verified allegations in the answer of debtor.

(j) That said Commissioner struck out said land from the schedules on the ground that said debtor was not the owner at the time he filed his schedules.

(NOTE: The Federal Supreme Court afterwards held said land was in bankruptcy.)

(k) The debtor filed his petition for the Federal Court to review said action of said Commissioner and the Creditor appeared in said action in the District Court but did not raise any question as to the jurisdiction of said Court or that no offer of composition and extension was made at [fol. 93] said first creditor's meeting on December 12, 1934.

(l) That said District Court decided against said debtor and refused to allow him to amend his petitions and the debtor appealed to the United States Circuit Court of Appeals and said Creditor appeared in the hearing in said Court and filed briefs and took part in the oral argument therein, but in none of said briefs did it claim that said debtor had not made a proper offer of composition and extension of time at said first creditor's meeting or question the jurisdiction of said Court over said case.

(m) That said Circuit Court held against the debtor that said debtor could not file his petition in bankruptcy after the sheriff's sale and that Congress had no power to extend the State period of redemption, but not on the ground that said Court had no jurisdiction of the case and said land.

(n) The District Court erred in overlooking all of these failures to raise the question it has raised in its petition herein, namely: that the debtor had made no offer of composition and extension under said Section 75. This is not all. The Court of Appeals decided against the debtor and upon his petition said cause was removed to the Federal Supreme Court and the latter reversed said Circuit Court as to the 200 acres of land in question here. That said Creditor appeared in said Court and filed brief and took part in the oral argument but never raised the question that the District Court or Court of Appeals did not have jurisdiction of the instant case.

(o) That therefore, the District Court in the instant case should have found in finding No. 3 that said Creditor had repeatedly waived any irregularity in said offer at said first Creditor's meeting and greatly erred in finding that no offer of composition or extension was made.

5. That finding No. 5 that the debtor did not turn over the [fol. 94] rent is not sustained by sufficient evidence.

6. The evidence shows the debtor used part of the rent to make necessary repairs on the buildings and considering this and what he has stored for the Creditor he has substantially complied with the order as to rent.

7. Besides this the record shows the Creditor repudiated section 75 and the Acts of Congress for the relief of insolvent farmers and tried to defeat this law in the State Courts and Federal Courts on the ground that they were void and of no effect, and that it has not accepted any of said rent from the Trustee, hence, it is in no position to take advantage on this point. It should not be allowed to blow hot and cold. If the law was not good and gave the debtor no rights the Creditor should not be allowed to use it to deprive him of his home and the Acts of Congress enacted to enable him to hold, and redeem it and refinance and rehabilitate himself within the extended period of redemption. The Court erred in overlooking that this is a court of Equity and a litigant must come into Court showing good conduct on its part, before it can invoke its aid against others.

8. The Court erred in finding Nos. 7, 8, 9 and 10, they are contrary to law.

The Act of Congress does not provide that failure to pay principal, interest, taxes is any ground authorizing the Court to end the stay and deprive the debtor of his right to remain on the land and does not deprive him of the right to refinance his loan, and reorganize and rehabilitate himself and redeem his land at the appraisement at or before the end of the period of redemption. As to the taxes the remedy was to have them paid out of the rents. The Court erred in ending the stay on account of either.

[fol. 95] 9. Finding No. 11 that the buildings are out of repairs is contrary to law. This is no ground to end the stay. The remedy was to have them repaired out of the rents. The Court erred in ending the stay on that account.

10. In finding No. 13 the Court finds the taxes and insurance were paid by the Creditor. This shows it did not accept the rents of the trustee and did not pay them out of said rents.

This finding is contrary to law and gave the Court no right to end the stay and turn the land over to the Creditor.

11. In finding No. 7 the Court finds that the mortgage debt amounts to \$15,003.68 and in finding No. 14 it finds the land in question is only worth \$6000.00. (This will become important in later errors.)

12. The Court finds in No. 17 that the income for the best of the three years was \$2000.00 and the lowest \$200.00. The Court erred in using this as a reason for ending the stay and depriving the debtor of his right to save his home under the remedial Acts of Congress. Such action of the Court was contrary to law.

13. The Court in No. 18 properly finds that the debtor could not pay more than \$6000.00 for the land. It erred in using that to end the stay. Its action in not allowing him to redeem it at said sum was an error and deprived him of his rights under these Acts of Congress and it was grave error to try to make him to pay over \$15000.00 to redeem \$6000.00 land. This act was contrary to law.

14. That finding No. 20 is not supported by the evidence and is contrary to the law and evidence in this: That said [fol. 96] debtor testified that he told the Commissioner and Roscoe D. Wheat Counsel for the Creditor at the first Creditor's meeting that he could only obtain a loan of \$8000.00

on the 200 acres and they said they would not accept it. That the offer of the loan was some three months prior to the Creditor's meeting. That the action of the Court in ending the Stay on this account was contrary to law.

15. Finding No. 21 to the effect that debtor had not delivered the crops to the Trustee and retained them is not sustained by sufficient evidence and the Court erred in ending the stay on that account. The finding is contrary to law in this: That the Court should have found that substantially all of the rent except the part used to pay for the repair of the dwelling house was turned over to the Trustee. It was the duty of the Trustee to pay the taxes out of said rents. As shown above the Creditor would not recognize the law and have it that way but stubbornly paid them itself.

16. Finding No. 22 that debtor's income is insufficient to liquidate the debt interest and taxes has nothing to do with the question before the Court and hence was contrary to law and was no reason why the Court should have ended the stay.

17. In finding No. 23 the Court finds there is no evidence showing a hope of rehabilitation. This is contrary in this: The Court should have found that there was no evidence showing that he could not redeem the land at its real value of \$6000.00.

18. The Court erred in finding No. 24 to the effect that the debtor had not complied with Section 75. It is not sustained by sufficient evidence and is contrary to law in this: The evidence showed and the Court should have found that the Supreme Court of the United States on May 31, 1938, [fol. 97] (82 L. Ed. Adv. Op. 1001) held in this identical case that the debtor had complied with the Acts of Congress (Section 75 (s)) and that this 200 acres of land was in bankruptcy in said District Court and that the debtor was entitled to the benefits of said Acts of Congress.

19. Finding No. 25 to the effect that debtor had not obeyed the orders of the Court is not sustained by sufficient evidence and is contrary to law in this:

That the Court should have followed said Federal Supreme Court and found that he had substantially complied with the orders of the Court. The Court should have also found that the Creditor ignored this Act of Congress and

would not accept the rent and is not in a position to now change its colors and position.

20. The Court erred in conclusion No. 1 that the law is with the creditor.

The Court erred in not following the decision in this case in the Supreme Court and stated the law is with the debtor.

21. The Court erred in its conclusion No. 2 that the request of the Creditor that the land should be sold at public sale should be granted. It is contrary to law in this: The debtor had filed a request to have the land re-appraised and asked the Court to allow him to redeem it at its real value and to turn it over to him free of said mortgage debt. The Court erred in this: Instead of allowing him to redeem the land at its appraised value it ordered it sold with the right of the Creditor to bid the amount of its debt over \$15000.00 and hence, greatly erred in practically ordering it sold at over \$15000.00 and thereby making it impossible for him to redeem said land at more than double its value.

22. That the Court erred in its order and judgment in [fol. 98] ordering the real estate herein situated in Jay County, Indiana and described as follows, to-wit:

The Southeast Quarter (S. E. $\frac{1}{4}$) of Section thirty-one (31), Township twenty-four (24) north, Range thirteen (13) East, and the Southeast Quarter (S. E. $\frac{1}{4}$) of the Southwest Quarter (S. W. $\frac{1}{4}$) of Section thirty-one (31), Township twenty-four (24) north, range thirteen (13) East, containing in all two hundred (200) acres, more or less.

be sold at public sale by William D. Rimmel, Trustee to the highest bidder for cash without relief from valuation and appraisement law and in giving said Creditor the right to bid the amount of its debt at said sale and that the debtor could only redeem said land at said sale except by paying the amount of said debt, and if he did not redeem it on that basis within 90 days from said sale the Trustee should deliver a deed to such purchaser (Practically the Creditor) and that if not so redeemed by the debtor should surrender the possession of said land to said purchaser.

23. That the Court erred in its findings and each of the same is contrary to law in this respect: That the evidence in said cause shows that it has not done equity in this cause hence is entitled to no relief.

24. That each of the findings of the Court are contrary to law in this: That the Court should have found that said creditor acquired no title to said land by virtue of the foreclosure proceedings and sheriff's sale and his deed in the State Court. That the Court erred in not finding that said proceedings in the State Court were null and void and did not divest him of his title to said real estate or deprive him of his rights under said Acts of Congress, to remain in possession of said land with the right to refinance said debt and save his home within said period of redemption as extended by the Act of March 4, 1938 or deprive him of his right to redeem said land within said extended period of redemption.

[fol. 98a] 25. That the Court erred in not concluding from evidence heard in the cause that the fact that the debtor had not paid any of the principal or interest, or taxes, or that he had been adjudged a bankrupt, or that his income was not sufficient to pay said debt, did not authorize the Court to end said stay and order said land sold and refuse to give him the period of redemption provided by the Acts of Congress in which to redeem said land and refinance and rehabilitate himself. That said order was arbitrary and in utter disregard of the Acts of Congress and if carried out will defeat the purposes and intent of Congress in enacting said remedial Acts.

26. That said Court erred and its action is contrary to law in this: That instead of finding said debtor had not made any offer of composition and extension that said creditor has repeatedly waived that question and by not objecting at said meeting and afterwards filing said motions in said cause admitted that said Court had jurisdiction of said cause and that said land was within the jurisdiction of said Court, as held by said Federal Supreme Court.

27. That said Court erred in holding that the fact that said debtor was unable to pay said mortgage debt it had the right to end said stay and sell said land. There is nothing in said Acts of Congress which requires the debtor to pay said debt when it has piled up beyond the real value of said land and the Court erred in not allowing and concluding that said debtor had the right under said Acts to redeem said land at its present appraised value, which the Court finds to be \$6000.00.

28. The Court erred in overlooking that in speaking of the debtor's hope and expectation to refinance or rehabilitate himself within the period of the moratorium, the Acts of Congress mean on the basis of the present real appraised [fol. 99] value of the land and in this case not upon the basis of the mortgage debt which has mounted to over \$15000.00.

29. The findings of the Court are contrary to law in this: The debtor in his cross-petition requested the Court to cause the land to be re-appraised, to allow him to redeem it by paying said value into Court within the period of redemption and then by an order turn said land over to him free of said mortgage debt and the Court erred in not granting said request and in failing to cause said land to be appraised and failing to allow him to redeem it on the basis of said appraised or upon the value fixed by the Court under the evidence in this cause.

30. Each of the findings of the Court are contrary to law and the conclusions are contrary to law in this: That the District Court had refused the debtor's petition to review and refused to grant him leave to amend his schedules in this proceedings in bankruptcy and the following steps were taken to appeal this cause to the Circuit Court of Appeals and the Supreme Court of the United States to-wit:

That afterwards on December 23, and December 31, 1936 said Debtor filed his applications in said Court to amend said schedules as to said real estate described in the petition herein.

That afterwards said Court denied said applications to amend with exceptions.

That afterwards said Debtor took the steps necessary to appeal said cause to the United States Circuit Court of Appeals for the Seventh Circuit sitting at Chicago, Illinois which was granted and designated as 6183.

That the transcript of the papers and proceedings both of said Appeals were duly filed and docketed in said Circuit Court of Appeals.

That afterwards said appeals were consolidated and heard as one case in said Court. And said Creditor appeared in said causes in said Court. That afterwards said Circuit Court of Appeals affirmed the judgment of said District Court and held there was no error in striking said real estate from schedules in 6183 and that there

was no error in denying said applications to amend said schedules and the motion to reinstate said real estate it in said schedules in No. 6184.

That such further proceedings were had in said causes that said Debtor filed his petition in the Supreme Court of the United States for a writ of certiorari in both of said causes to said Circuit Court of Appeals. That due notice was given said creditors and said Supreme Court granted said petition and ordered said causes be sent up to said Supreme Court.

That said Court of Appeals sent the transcript of the record in both of said causes to said Supreme Court which records were duly filed on January 14, 1938 in the office of the Clerk of said Court and said causes were duly docketed in said Supreme Court as follows:

Supreme Court of the United States, October Term 1937. No. 715. James M. Wright, Petitioner, vs. Union Central Life Insurance Company. No. 716. James M. Wright, Petitioner, vs. Union Central Life Insurance Company.

That the records in said cause were duly printed as required by the Rules of said Court.

That said Appellant prepared and filed his briefs as required by the Rules of said Court and said Appellee, the [fol. 101] Union Central Life Insurance Company appeared and filed its briefs therein.

That said cause was duly submitted to said Court and set for argument and was orally argued therein by Counsel for Appellant and Appellee on April 6, 1938.

That afterwards on May 31, 1938 said Supreme Court delivered its opinion and judgment in said cause reversing said Court of Appeals as to said 200 acre tract and holding (among other things) that said real estate was properly in the schedules in said cause and in said proceedings in bankruptcy, and that said Circuit Court of Appeals erred in striking it out. And also held that subsection (s) of section 75 of the Bankruptcy Act enacted August 28, 1935 was constitutional and that Congress had the power to extend his right to redeem said land from said Mortgage debt until March 4, 1940 and that said Debtor under said subsection (s) and its extension had the right to remain in possession of said land for said period on the payment of a reasonable rental and was given until last-named date to refinance and rehabilitate himself. That said judgment is reported in 82 L. Ed. Adv. Op. 1001-1009 and is binding on said

Creditor. That it estops said creditor not only as to every ground of recovery set out in its petition to strike out said land filed in said District Court in July 29, 1936 but it also settles every other ground of action which might have — presented in said petition. That having selected one ground or cause as to why said land should be stricken from said schedules, it waived and lost all others and now has no right to relitigate said grounds in its new petition filed herein on July 22, 1938. That each and every ground or cause of complaint against said debtor set out in said last-named petition existed at the time of the filing of the same and could have been included therein and hence, in law were included therein. That said judgment is as conclusive as to said omitted grounds as though they never had existed. That said judgment is final and conclusive on all of the matters set forth in its new petition. That under the decision [fol. 102] of the Federal Supreme Court said Creditor had no right to split up its case and omit part of its complaint against said Debtor and latter attempt to use said omitted grounds as a basis for a second or third trial against said Debtor.

31. That the Court erred in its findings and they are contrary to law in this: That said Court should have found that each and all of said matters and questions presented in the Creditor's petition herein were settled and adjudicated in the judgment of said Federal Supreme Court and this Court erred in overlooking that said judgment is a former adjudication of said questions and are res adjudicata and binding on said Creditor and that after said Supreme Court held that said 200 acres of land are in the proceedings in bankruptcy in this cause and that the debtor is entitled to the benefits of said Acts of Congress as to said land this Court is bound thereby and erred in overlooking that it has no power to review or overrule said Court and hold that said land is not in said proceedings and that the debtor is not entitled to the benefits of said Acts of Congress and it does not have the power to deprive him of the benefits of said Acts. That said decision of said Supreme Court became the law of this case and said questions set out in its petition cannot be reopened again and relitigated in the new proceeding, in this case. And the Court erred in overlooking that said decision of the Supreme Court is final and conclusive as to all questions presented in said

Appeal and also all questions which might have been included therein. That the record will show that there is not a question presented in the new petition but what was presented in the appeal and the others might have been presented therein.

32. The Court erred in overlooking that the petition does not show any ground for any relief and the Court should [fols. 103-104] have dismissed it for want of equity and on the ground that the decision of the Supreme Court settled all of the questions raised therein and that the District Court had no power and the creditor had no right to retry the questions settled by the Supreme Court.

33. The Court erred in not giving the debtor the benefits of the Acts of Congress and in not ordering the Conciliation Commissioner to proceed with the Administration of the estate and in not allowing the debtor to redeem the land at the value fixed by the Court.

34. That the Court erred in finding (k) to the effect that said debtor was beyond all reasonable hope or expectation of rehabilitation.

35. That there are many other manifest errors of the Court as shown by the record which are so important that this Court should take notice of them in considering this appeal.

Dated this 6th day of March, 1939.

Samuel E. Cook, Counsel for Debtor.

[fols. 105-106] IN UNITED STATES DISTRICT COURT

No. 2073

[Title omitted]

NOTICE OF APPEAL—Filed March 8, 1939

To Appellees:

Please take notice that James M. Wright, Debtor and petitioner herein has filed in the District Court of the United States for the Northern District of Indiana, Fort Wayne Division his petition for an appeal from the deci-

sion, orders and judgment of said Court in said cause, rendered and entered by said Court on February 11, 1939 in ordering the real estate therein sold at public sale with the right of the Creditor to bid the full amount of its debt and requiring the debtor to redeem said land within 90 days at the amount of said debt and in the event that he could not redeem at said amount that he surrender said land to the purchaser and lose all of his rights therein to the United States Circuit Court of Appeals sitting at Chicago, Cook County, Illinois, 1210 Lake Shore Drive.

Dated this 7 day of March, 1939.

James M. Wright, Debtor. Samuel E. Cook, Counsel
for Debtor.

[File endorsement omitted.]

[fols. 107-108] IN UNITED STATES DISTRICT COURT

No. 2073

[Title omitted]

ORDER ALLOWING APPEAL

On reading the petition of James M. Wright, dated March 7, 1939 for an Appeal and on consideration of the assignment of errors filed therewith, it is ordered that the appeal prayed for therein be allowed and granted from said District Court to the United States Circuit Court of Appeals for the Seventh Circuit sitting in the City of Chicago, Illinois, 1210 Lake Shore Drive. And the Court orders that a certified transcript of the record and all proceedings in said cause in this Court be transmitted to the Clerk of said Circuit Court of Appeals and that the cost bond herein be fixed at \$250.00 to be filed within ten days and supersedeas bond at \$2500.00.

Dated March 8, 1939.

Thos. W. Slick, Judge United States District Court
for the Northern District of Indiana, Fort Wayne
Division. Samuel E. Cook, Counsel for Debtor.

[fols. 109-111] Citation, in usual form, showing service on Arthur S. Lytton and Wm. D. Rimmel, filed March 8, 1939, omitted in printing.

[fol. 112] IN UNITED STATES DISTRICT COURT

No. 2073

[Title omitted]

AFFIDAVIT FOR LEAVE TO APPEAL IN FORMA PAUPERIS AND TO
STAY SALE OF REAL ESTATE—Filed March 8, 1939

Comes now James M. Wright and being duly sworn on his oath deposes as follows:

That he is a citizen of the United States, residing in Jay County, Indiana and is a farmer by occupation, and Appellant herein.

That heretofore he was unable to meet his mortgage debt on his real estate in said County and filed his petition under section 75 of the Act of Congress enacted March 3, 1933 relating to bankruptcy and that he took all of the steps required by said act and the new act of August 28, 1935 for the relief of insolvent farmers and its amendment on March 4, 1938 and thereby said land and all of his property were brought within the jurisdiction of said Acts in said Court.

That affiant is still the owner of said land of 200 acres and is entitled to the benefit of said Acts and the protection of the laws of the United States.

That on February 11, 1939 there was a certain proceedings relating to said land between him and The Union Central Life Insurance Company, the mortgagee in said cause, pending in said Court on the petition of said Creditor and the answers of the debtor thereto and his cross-[fol. 113] petition therein.

That on said day said cause came on for final hearing and said Court rendered judgment and orders in favor of said Creditor and against said debtor, to the effect that the following real estate in Jay County Indiana, to wit:

The Southeast Quarter (SE $\frac{1}{4}$) of Section thirty-one (31), Township twenty-four (24) North, Range thirteen (13) East, and the Southeast Quarter (SE $\frac{1}{4}$) of the Southwest Quarter (SW $\frac{1}{4}$) of Section thirty-one (31), Township twenty-four (24) North, range thirteen (13) East, containing in all two hundred (200) acres, more or less.

—be sold at public sale to the highest bidder for cash and appointed said Appellee, William D. Remmell, Trustee to

make said sale and ordered that said Creditor should have the right to bid its debt at said sale and unless the debtor redeemed from said sale within 90 days by paying said amount of said bid to said Trustee should convey said real estate to the purchaser.

That said Court refused to have said land appraised and to allow the debtor to redeem the same at its appraised value and refused to find that said questions in said petition had been adjudicated by the Supreme Court of the United States and were binding on said parties and said Court.

That thereby said Court deprived the debtor of the benefits of the Acts of Congress and ended said stay and did not give him the period of redemption to refinance, reorganize and rehabilitate himself.

That affiant is aggrieved and greatly injured by said findings, judgment and orders of said Court and desires to exercise his right to appeal from said judgment and orders to the Circuit Court of Appeals for the Seventh Circuit, sitting at Chicago, Illinois in order to save said land.

That I firmly believe said Court erred in said judgment and that I am entitled to the redress sought to be obtained in his exceptions and in this appeal.

[fol. 114] That the nature of the questions presented in said proceedings judgment and orders are in substance as follows:

That after the Supreme Court of the United States in the case wherein the debtor was Appellant and said Union Central Life Insurance Company was Appellee said Court held that said acts of Congress were valid and that the real estate herein was in said proceedings in bankruptcy, the Creditor filed its petition praying the Court to end the stay and order said real estate sold and complained of a number of different things among others that it had acquired title to said land by a foreclosure of its mortgage and a sheriff's sale in the State Courts. The Creditor showed such proceedings in the State Court were void and the Supreme Court did not even notice such a claim. That said foreclosure claim was set up by said Creditor in the District Court prior to the appeal to the Circuit Court of Appeals and was presented in the record of said appeal to the Federal Supreme Court. That said creditor waited until after said Supreme Court decision before it ever set up the claim that the debtor

had not made any offer of composition and extension at said first meeting of Creditors. That it also claimed he had not paid the rent, kept the buildings in repair and other trivial matters. The debtor denied these allegations and proved at the trial that the rent had been paid and disproved all of the other things complained of in said petition.

That the debtor filed his answers to said petitions showing among other things the following:

That said Creditor disregarded the first Acts of Congress enacted June 24, 1934 for the relief of insolvent farmers in its action in the State Courts to deprive the debtor of his right to a Stay to enable him to finance his debt.

That it continued to litigate against him in this Court and he had to appeal to the Circuit Court of Appeals of the 7th Circuit. It followed him there and to the Federal Supreme Court.

[fol. 115] (Wright vs. Union Central Law Ed. Advance opinions Vol. 82 No. 17 pp. 999-1009.)

That Court rejected the theories and actions it had urged, in the lower Courts to deprive him of his rights under said Acts of Congress and held that he was entitled to the benefits of said Acts of Congress, as to said land.

That these actions of the creditor has cost him thousands of dollars, loss of much time and caused him untold worry and anxiety lest he should lose his home and be turned out on the highways and make it utterly impossible for him to refinance himself. That said Creditor is not content with its defeat in the Supreme Court and the damage it has done the Debtor but has filed the petition herein to further harass him and to defeat his rights under said Acts of Congress, to remain in possession of his home and refinance it on the basis of its appraised value. That said debt is now double the value of said land and any attempt to finance it on said basis means the loss of his home and the savings of a lifetime invested therein. That he is not to blame for said situation and said Creditor has no right in a Court of Conscience to take advantage of said situation and confiscate his home. That all of the interest it has in said security is the real value of said land.

That said debtor also answered said petition showing that said other questions not complained of in said petition could have been presented in said Creditor's former petition

and hence it was precluded from relitigating said omitted questions, and hence they were adjudicated and that said decision held that said land was in the bankruptcy proceedings and had decided that the debtor was entitled to all of the benefits of said Acts of Congress and the right to retain his land until the end of the extended period of redemption for the purpose of refinancing, reorganizing and rehabilitating himself.

That said debtor also filed his cross-petition in said cause asking the Court to cause said land to be re-appraised and allow the debtor the right to redeem it at its appraised value [fol. 116] by paying said sum into Court at or prior to said period of redemption as fixed by Congress the Court should be an order turn over said land to the debtor free and clear of said mortgage debt.

That the evidence in said cause showed said debtor had paid his rent, kept the premises in ordinary repair. That his failure to pay principal and interest are not causes for ending said stay. That the rents took care of the taxes.

To sum the matter up there was nothing complained of in said petition which entitled said Creditor to a finding that the stay should be ended and the land sold and no reason why the debtor should be deprived of his land and lose his right to redeem said land and rehabilitate himself at or prior to the end of the period of redemption.

That under the law and the evidence said Court should have found for said debtor and denied the Creditor the right to sell said land and take it away from said debtor and deprive him of his rights under said Acts of Congress.

That said Creditor has carried on intense litigation against him for several years trying to get said land and defeat his rights under said Acts of Congress and has thereby exhausted all of his means.

That because of my poverty I am now unable to give bond for costs on appeal herein and am unable to pay to the Clerk of this Court the costs of a transcript of the record and pay the deposit to the Clerk of the Court of Appeals for docketing this appeal or to pay the costs of printing the record therein or to give security for any of said matters.

That there is no person interested by contract or otherwise in said cause and appeal or entitled to share in any recovery thereunder, who is able to pay or secure said costs.

That this affidavit is made in good faith and for the purpose of saving said land and obtaining the benefits of said

Acts of Congress and of availing myself of my rights and [fols. 117-119] privileges as a citizen of the United States and availing myself of my rights under section 832 Title 28 of the United States Code, relating to poor persons entangled in litigation in the Federal Courts.

That unless, I am permitted to proceed in this appeal in forma pauperis and prosecute said appeal to review said judgment and said orders of said District Court as set out above, I will be utterly helpless and unable to obtain the benefits of said Acts of Congress and will lose said land and the large amount of money which I have invested in it and be unable to rectify said losses.

Wherefore he asks the Court to grant his petition herein and grant him leave to appeal as a poor person as to all of said costs and expenses and supersedeas bond as set out above and that the Court stay said proceeding to sell said real estate without bond and as a poor person and for all other proper relief.

Dated this 7th day of March, 1939.

James M. Wright, Debtor.

Subscribed and sworn to before me this 6th day of March, 1939. Samuel E. Cook, Notary Public. My commission expires 3/8/1939.

Samuel E. Cook, Counsel for Debtor.

[File endorsement omitted.]

[fols. 120-121] IN UNITED STATES DISTRICT COURT

No. 2073

[Title omitted]

ORDER ON AFFIDAVIT FOR APPEAL AS A POOR PERSON—Filed
March 8, 1939

Comes now the debtor and his petition coming on to be heard on his affidavit to be allowed to appeal his cause set out in said affidavit from this Court to the Circuit Court of Appeals for the Seventh Circuit, in forma pauperis upon his affidavit filed March 7th, 1939 as provided in Section 832 of Title 28 of the Judicial Code of the United States.

And the Court having considered the same, it is ordered that said James M. Wright be allowed and granted leave to prosecute said appeal to said Court of Appeals without being required to pay the Clerk of said Court for preparing a transcript of the record for said appeal or securing the same, or giving a cost bond or securing the same or paying the deposit to the Clerk of said Court of Appeals for docketing said cause, or the cost of the printing of the record in said cause of the costs taxed in said Court, or securing the same, because of his poverty and it is further ordered that all of the judicial officers who may have to perform services in said appeal, shall render the same, as if said cost were paid or as if security had been given as required by law.

And it is further ordered that if Appellant shall recover judgment in said appeal all of said costs shall be paid and a lien on such judgment will be given to secure the payment of all fees and costs incurred as aforesaid and due and unpaid.

Dated this 8th day of March, 1939.

Thos. W. Slick, Judge District Court, United States.

The Court declines to include a supersedeas bond in the above order and declines to stay the sale of the real estate herein without a bond, but requires a bond before he will grant said stay.

Thos. W. Slick, Judge District Court, United States.

[File endorsement omitted.]

[fol. 122] IN UNITED STATES DISTRICT COURT
No. 2073

[Title omitted]

PRAECIPE FOR TRANSCRIPT OF RECORD—Filed March 20, 1939

To the Clerk of the District Court of the United States for the Northern District of Indiana, Fort Wayne Division:

Please make out and certify a transcript of the following records in the above entitled cause on appeal to the United

States Circuit Court of Appeals for the Seventh Circuit and transmit the same to the Clerk of said Court:

1. Petition of Union Central Life Insurance Company to dismiss proceedings in bankruptcy, end stay and order the real estate herein as described in said petition filed in said Court July 22, 1938 to be sold at public auction with the right of the Creditor to bid its debt at said sale.

2. Debtor's motion to dismiss petition or bill of complaint filed July 22, 1938.

3. The order of the Court entered August — 1938 or near [fol. 123] that time in which it overruled said debtor's motion, and exceptions thereto.

4. Debtor's answer to said Creditor's petition the latter being filed October 5, 1938.

5. Debtor's cross-petition against said Creditor asking the Court to cause the land to be appraised and giving him the right to redeem it at its appraised value or the \$6000.00 value as fixed by the Court in Special finding herein and when paid into Court that the land be turned over to him free of said mortgage debt.

6. The answer of the Union Central Life Insurance Company to said cross-petition.

7. Debtor's answer of res judicata showing that all of the questions presented or which might have been presented in said Creditor's petition herein and all were settled in the decision between the parties herein by the Federal Supreme Court in the case of Wright vs. Union Central Life Insurance Company, May 31, 1938, 82 L. Ed. U. S. Adv. Op. p. 1001-9, and that it is the law of this case and the Creditor is bound by said judgment and precluded from retrying said questions.

8. The entry showing the trial of said cause at South Bend.

9. The Special finding of facts and conclusions of law therein as made by the Court. Exceptions thereto of January 30, 1939.

10. The final order and judgment of the Court entered February 11, 1939 and exceptions thereto.

11. The original report of Byron G. Jenkins, Conciliation Commissioner reporting the first Creditor's meeting held, [fol. 124] December 12, 1934, with the approval of the court indorsed thereon.

12. The Creditor's motion to dismiss this proceedings as to the real estate scheduled and to require the debtor to account for the rents and crops received therefrom dated about January 3, 1936.

13. Also, motion by the Union Central Life Insurance Company for an order to strike certain real estate from the schedules and inventory and appraisement filed in this matter and an order against the Conciliation Commissioner withdrawing said real estate from his jurisdiction and control and an order against the Receiver appointed by the Conciliation Commissioner, setting aside and vacating any leases or contracts entered into by him in relation to said real estate—Filed in said Court July 29, 1936. (Since the exhibits are set out in substance in the motion they need not be repeated herein.)

14. The answer of the debtor to said motions filed before said Conciliation Commissioner November 6, 1936.

15. The report of the hearing of said motions, before said Conciliation Commissioner held November 6, 1936 made to said Court and filed in the District Court about December 3, 1936 with the approval of the Court thereon.

16. The condensed statement of the evidence material to the issues presented by this petition, answers thereto and cross-petition given at the trial of said cause in narrative form, and supplemental report.

17. The debtor's petition for an appeal to the Circuit Court of Appeals.

18. The debtor's assignment of errors filed with said petition for appeal.

19. Notice of said appeal and proof of service.

20. Order of Court allowing said appeal.

21. Original Citation on appeal.

22. A copy of this praecipe.

Respectfully submitted, Samuel E. Cook, Counsel for
Debtor.

Dated this 18th day of March, 1939.

[[fols. 125-126] In re JAMES M. WRIGHT vs. UNION CENTRAL
et al. 2073

STATE OF INDIANA,

County of Huntington, ss:

Samuel E. Cook being duly sworn on his oath says that he is Counsel for the debtor in the above entitled cause and

that on March 18, 1939 he served a copy of the praecipe for transcript on the said Union Central Life Insurance Company by mailing a copy thereof to Mr. Arthur S. Lytton, its Attorney at his address in the City of Chicago, Illinois and by depositing the envelope containing the same in the United States Post Office, Huntington, Indiana with the proper postage thereon.

And that on the same day he served a copy of the praecipe for transcript on said William D. Rimmel by mailing a copy thereof to his address in the City of Fort Wayne, Indiana and likewise depositing the envelope containing the same in the United States Post Office in the City of Huntington, Indiana with the proper postage thereon. That this proof is attached to the original of said praecipe.

Samuel E. Cook, Counsel for Debtor.

Subscribed and sworn to before me this 18th day of March, 1939. J. Willard Moffett, Notary Public.
My Commission Expires Dec. 2, 1942. (Seal.)

[File endorsement omitted.]

[fol. 127] IN UNITED STATES DISTRICT COURT

[Title omitted]

PRAECIPE FOR ADDITIONAL RECORD—Filed March 22, 1939

To the Clerk of the District Court of the United States for the Northern District of Indiana, Fort Wayne Division:

You are hereby requested to incorporate in the transcript of record, on the appeal herein, in addition to the portions of the record designated by appellant by his praecipe hereinbefore filed, the following:

1. The complete Transcript of the Evidence (exclusive of exhibits) heard and filed herein and certified by the Official Reporter of this Court.
2. A copy of this praecipe.
3. A copy of the Notice hereof and of the affidavit of service of same.

Respectfully, Roscoe D. Wheat, Virgil D. Parish,
Arthur S. Lytton, Attorneys for The Union Central Life Insurance Company, Appellee.

IN UNITED STATES DISTRICT COURT

[fol. 128-129]

[Title omitted]

NOTICE

To: Hon. Samuel E. Cook, Attorney for Debtor.

Please Take Notice that we are this day forwarding to the Clerk of the above Court, at Fort Wayne, Indiana, a praecipe for additional record, per copy served upon you herewith.

Roscoe D. Wheat, Virgil D. Parish, Arthur S. Lytton,
Attorneys for The Union Central Life Insurance
Company, Appellee.

STATE OF ILLINOIS,
County of Cook, ss:

Arthur S. Lytton, being first duly sworn, on oath says that he is one of the attorneys for the above named appellee and that as such he has served a copy of the above notice and praecipe for additional record therein mentioned, upon Samuel E. Cook, attorney for the above named debtor, by depositing same in the United States mail in an envelope properly stamped and addressed to said attorney for debtor, U. S. Building, Huntington, Indiana.

Arthur S. Lytton.

Subscribed and sworn to before me this 21st day of
March, 1939. Norman A. Broholm, Notary Public.
(Seal.)

[fol. 130] IN UNITED STATES DISTRICT COURT

[Title omitted]

STIPULATION AS TO TRANSCRIPT OF EVIDENCE—Filed March
23, 1939

It is stipulated by the parties to this appeal that the transcript of the evidence given at the trial of said cause with the exhibits referred to therein as prepared and certified by Cora Gibson-Nellans the Shorthand Reporter who took down said evidence at said trial and is now on file in the office of the Clerk of said Court, is a true and complete

transcript of said evidence and said exhibits and contains all of the evidence given in said cause at said trial and the Judge of said District is requested to properly approve and certify the same and file it in the offices of said Clerk of said Court who shall certify the same to the United States District Court of Appeals for the Seventh Circuit sitting at Chicago, Cook County, Illinois in the United States Court House, 1210 Lake Shore Drive to be used as the evidence on said Appeal. That the debtor will ask said Clerk to omit the opinion of the Circuit Court of Appeals of the Seventh Circuit, in Wright vs. Union Central Life Insurance Co. and the opinion of the Supreme Court of the United States in said cause on appeal.

[fol. 131] Dated this 22 day of March, 1939.

Samuel E. Cook, Counsel for Appellant, Arthur S. Lytton, Counsel for Appellees.

[fol. 132] IN UNITED STATES DISTRICT COURT

No. 2073

[Title omitted]

PETITION TO ENLARGE TIME FOR FILING TRANSCRIPT—Filed
March 27, 1939

May it please the Court:

Comes now James M. Wrigat and respectfully represents to the Court that the return day in the citation of said cause will expire April 6, 1939. That it will be impossible for the Clerk of said Court to prepare and file a transcript in said cause at the time so fixed for the following reasons:

That there is delay and confusion between counsels in agreeing upon the papers and exhibits to be included in the transcript and the stipulation as to the evidence which the Judge of this Court shall approve and certify up to the Circuit Court of Appeals. This cannot be ironed out by April 6, 1939 and more time will be required.

And on account of the press of other public business in [fols. 133-134] said Clerk's Office, she cannot complete said transcript.

Wherefore he asks the Court to extend the time for filing said transcript in the Court of Appeals 30 days more from April 6, 1939.

James M. Wright, Debtor, per Samuel E. Cook,
Counsel for Debtor.

Subscribed and sworn to by Samuel E. Cook, Counsel
for debtor this 25 day of March, 1939. Clyde R.
Roush, Notary Public. My commission expires
May 16, 1939. (Seal.)

Approved: Thos. W. Slick, Judge, March 27, 1939.

[File endorsement omitted.]

[fol. 135] IN UNITED STATES DISTRICT COURT

No. 2073

[Title omitted]

ORDER AS TO TRANSCRIPT ON APPEAL

The Court having considered the stipulation of Counsel for the parties herein, does hereby certify that the foregoing transcript of the evidence as certified by said Shorthand Reporter is allowed and approved and that it is a true and complete copy of all of the evidence given by the witnesses at said hearing of said cause before me on October 21, 1938 in said Court (the opinion of the Circuit Court of Appeals for the Seventh Circuit in Wright vs. Union Central Life Insurance Company, and the opinion of the Supreme Court of the United States in said cause on appeal are omitted and have been withdrawn from appellant's praecipe filed herein), and the same is hereby ordered filed by the Clerk of the Court in the Ft. Wayne Division as the oral evidence to be included in the record and transcript of said cause, and she is directed to certify the same to the Clerk of the Circuit Court of Appeals for the Seventh Circuit, together with the pleadings, proceedings and other documents filed in said cause for the consideration of said Court of Appeals, speci-

fied in the praecipies for record hereinbefore filed, and not included in the transcript.

Dated this 12th day of April, 1939.

Thos. W. Slick, Judge, U. S. District Court.

Attest: Margaret Long, Clerk of said Court.

[File endorsement omitted.]

[fols. 136-137] Clerk's Certificate to transcript omitted in printing.

[fol. 1] IN UNITED STATES DISTRICT COURT, NORTHERN DISTRICT OF INDIANA, FORT WAYNE DIVISION

Statement of Evidence

Heard during October Term, 1938 of South Bend Division. Before the Honorable Thomas W. Slick, begun on October 21, 1938, and concluded on October 22, 1938, at South Bend, Indiana.

Reported by: Coral Gibsen-Nellans, Shorthand Reporter, 103 South Liberty St., Plymouth, Indiana. In the Matter of the Union Central Life Insurance Company, vs. James M. Wright, Debtor: #2073.

APPEARANCES

For the plaintiff: Virgil D. Parish, Cincinnati, Ohio. Roscoe D. Wheat, Portland, Indiana. Arthur S. Lytton, of Bull, Lytton & Olson, 134 North LaSalle Street, Chicago, Illinois.

For the defense: Judge Samuel E. Cook, Huntington, Indiana. Homer E. Bailey, Huntington, Indiana. All of the above were present October 21, 1938; Mr. Parish, Mr. Lytton and Mr. Cook, only, were present on October 22, 1938.

[fol. 2] After the opening statements of counsel of some length, the following evidence was introduced:

(This evidence is prepared at the request of Plaintiff, with instructions to exclude arguments of counsel interspersed.)

BYRON G. JENKINS, called as a witness by the Plaintiff, being first duly sworn upon his oath, testified as follows:

Direct examination of Byron G. Jenkins.

By Mr. Lytton:

Q. Will you state your name and residence, please?

A. Byron G. Jenkins, Portland, Indiana.

Q. And you are Conciliation Commissioner for Jay County?

A. Yes.

Q. And have been for how long, Mr. Jenkins?

A. Prior to the time this case in question was filed, I am sure.

Q. Was in '34? You were acting in '34?

A. I think that is right; I recall at the time this office was created I was appointed at that time.

Q. Now you had your first meeting of creditors, did you not, in this case, in December of 1934?

A. I can answer that question by stating that I filed a report that had all of my rulings as commissioner.

Q. I don't believe it is necessary, these are part of the record of this Court, and if it meets the Court's approval I will simply refer to this?

[fol. 3] Judge Cook: After, as far as we are concerned we have some papers and I always have felt it safer to prove them.

The Court: You don't need to prove when he was appointed. I appointed him and I know if I look at the record.

Judge Cook: There are some papers that we want to use that are part of the files.

We generally talk about the files being before the Court; to make sure we have no objection to offering any paper; we would want the same privilege.

Q. I will hand you a paper marked Petitioner's Exhibit #1 and ask you whether or not that is your report in this case, as Conciliation Commissioner, dated January 12, '34?

A. It is.

Q. At that meeting of creditors the debtor, Mr. Wright was present, was he?

A. Yes.

Q. You may state if you will whether or not at that time Mr. Wright made or tendered any offer of composition or extension in this case.

Judge Cook: To that the Debtor objects on the ground that it is too late to raise that question; that the records show that he did make an offer of eighty-five hundred dollars and that this Commissioner's report at another place shows that; that if there was anything lacking there it was the duty of the Creditor to raise that question within a reasonable time after the first Creditors' meeting and the fact that they never did make any objection until now if a waiver of any irregularity on that account; and that evidence is wholly immaterial and irrelevant and does not tend to prove or disprove any of the issues involved in this matter.

The Court: Overruled.

Judge Cook: Exception.

A. After reading my report here I refreshed my recollection about this case and I say now that he had no definite offer to make to the creditors; we might say specified, rather.

Judge Cook: Move to strike the answer out for the same reasons as given to question.

The Court: Overruled.

Judge Cook: Exception.

Q. Then he did not, the Debtor made no offer of composition and extension at that time?

Judge Cook: Object; asking for conclusion; and not any facts.

The Court: Overruled.

Judge Cook: Exception.

A. He had no specific or definite offer to make to the creditors in this case at that time.

The Court: You mean he said he had none?

A. No sir.

The Court: What do you mean?

A. He offered none.

[fol. 5] Judge Cook: Move to strike that out. It is a conclusion.

The Court: Overruled.

Judge Cook: Exception.

Q. Mr. Jenkins, you continued as Conciliation Commissioner all, later, did you not, when the Debtor filed his amended petition under Sub-Section S in 1935?

A. I did.

Q. Will you state whether or not at that time or at any other time during the progress of this case, as far as you know, the Debtor did or did not make any offer of composition or extension herein?

Judge Cook: We object to that because it is too late; and for the other reasons given. And further reason—

The Court: I am going to admit this part; if too late it, of course, won't be considered.

Judge Cook: But I must get the objections in the record.

The Court: You will have to try the case as you see fit.

Judge Cook: Incompetent, irrelevant and immaterial; his written report shows that there was an offer made; it is his conclusion; the Creditor never raised any question at that time and the gentlemen went through with that waiver to the Supreme Court of the United States and it is too late now.

The Court: Overruled.

Judge Cook: Exception.

[fol. 6] Mr. Lytton: Read the question.

Reporter: "Will you state whether or not at that time or at any other time during the progress of this case, as far as you know, the Debtor did or did not make any offer of composition or extension herein?"

A. There was no offer at any time made.

Judge Cook: Move to strike out for the same reasons.

The Court: Overruled.

Judge Cook: Exception.

Q. Do you recall, Mr. Jenkins, a time in the latter part of 1936, when the Trustee, Mr. Alexander, and the Debtor, came to your office and you had a discussion with them?

A. I had so many I don't recall which one you mean.

Q. Well the discussion I have in mind had to do with the, with certain crops or a portion of them, which Mr. Wright had not turned over to the Trustee under his lease agreement with the Trustee, do you recall that?

A. Yes.

Q. Did the Trustee request the crops or did you?

Judge Cook: We object to that; that is putting the words in his mouth.

Mr. Lytton: I will make it just as long as you want it, Judge.

Q. Well give the discussion you had there, as nearly as you can recollect, Mr. Jenkins.

[fol. 7] A. The Trustee, Mr. Alexander, and——

Judge Cook: Well we object to that; we object to the testimony of the witness, because it is not important here; the fact that he did not turn over crops or so on is no cause for denying him the benefits of this Act of Congress; nothing in the Act itself that provides that should be in case he does not; does not tend to prove any issue in the case.

The Court: Overruled.

Judge ——: Exception.

Reporter: "Q. Did the Trustee request the crops or did you?" "Well give the discussion you had there, as nearly as you can recollect, Mr. Jenkins."

A. In substance the Trustee demanded a share of the crops belonging to the trustee, to which the Trustee was entitled.

Q. The Trustee answered?

A. The Debtor answered: "I am not going to turn them over at this time; if this Act is Constitutional I will turn them over and if it is not I shall keep them."

Judge Cook: Wholly immaterial and not responsive; move to strike out.

The Court: Overruled.

Judge Cook: Exception.

Q. When you say the Trustee demanded his share of the crops, of whom did he demand them?

[fol. 8] A. Of the Debtor.

The Court:

Q. What time was this?

Mr. Lytton: December of '36, your Honor; and had reference to the '36 crops, did it not, Mr. Jenkins?

A. I thought it was '37.

The Court: '37; Dec. '37.

A. I think that is right; '36 or '37.

The Court: Well which.

A. I have a report that states it, sets it all out.

The Court: Well look at it.

A. My second report.

Mr. Lytton: I have got that. If I may be permitted to refer to the printed record in the transcript in the United States Supreme Court.

Judge Cook: That may go in; because we have some of the same kind of evidence.

The Court: What does that say?

A. '36 your Honor.

The Court: That was then for the 1936 crops; his share?

A. That is right.

The Court: Was there anything turned over, do you know, for '36? In other words, he said he would not but did he later, that you know of?

A. I think the Trustee can best answer that; he is here.

The Court: But that you know of.

[fol. 9] A. I don't know.

The Court: You don't know.

Q. Mr. Jenkins have you seen that two hundred acre farm lately?

A. No.

Q. How often have you seen it in the past two or three years?

A. I don't recall; I could pick it out down there.

Q. That is all.

Cross-examination of Mr. Jenkins.

By Judge Cook:

Q. Let me see that paper, will you?

(Witness hands Petitioner's Exhibit I to Judge Cook.)

Q. Mr. Jenkins, did you not recite in this report that there was an offer of eighty-five hundred dollars and that the Company wanted nine thousand?

A. No.

Q. Well you say in there the hearing "that on November 24 the Debtor was offered—

A. Read the year there and see—November 24—

Q. Well '33; that \$8500.00 was tendered, was talked about there?

A. Well talked about, yes; I suppose.

Q. Where did you get the information to make that if it was not talked there?

A. You are talking about my report?

Q. Yes; where did you get it?

A. Why from the witness.

[fol. 10] Q. So they talked about the eighty-five hundred offer?

A. As I have stated.

Q. And they wanted nine thousand?

A. I don't know about that.

Q. Well they would not accept eighty-five hundred?

A. How do you mean?

Q. The Company, Mr. Wheat was there, was he not?

A. Yes.

Q. Would he accept it?

A. I don't know.

Q. Who was he representing?

A. Union Central, Judge.

Q. And he was there from beginning to end?

A. Yes.

Q. Who else was there?

A. I think you were.

Q. No; no I was not; I was not in the case then; not until a year or so afterwards.

A. Well Mr. Wright.

Q. And there was some talk there about the eighty-five hundred dollar offer?

A. Yes I can tell exactly what that was.

Q. Well what was it?

A. About nine months before this Act became effective Mr. Wright had an offer of a loan of eight-five hundred and [fol. 11] the loan was never accepted.

Q. Well why do you want to tell that; that he made an application a year or so before; why do you want to tell it?

A. It is right there.

Q. You have been hostile to this man from the beginning?

A. I would not say that.

Q. Why you appeared at Ft. Wayne against him?

Mr. Lytton: I think the witness has some privileges; no use insulting the witness, Judge.

Judge Cook: I don't want to insult him but I don't want him to tell things untrue.

Q. There was talk about eighty-five hundred dollars and Mr. Wheat would not accept it?

A. I don't recall.

The Court: He testified that there was a talk and it developed that six or nine months before this Act was passed he was, he offered to borrow eighty-five hundred.

Q. No, he had an offer of a loan. And did not know but what they would take it.

A. That would take "no" Judge.

Q. And did not, you did not know anything about it?

A. That is right.

Q. And there might have been; he might have been able to get it the next day from what you know?

[fol. 12] A. I don't know; that was nine months ago.

The Court: He says he don't.

Q. Alright; you did not know but what he could get the loan the next day, even so, you stuck it in the report that it was way back in November, 1934?

A. He told me.

Q. Why did you put it there?

A. That is what I got from the hearing.

Q. Why did you not put it in?

A. I was not interested.

Q. Did you not want him to save his land; and his home?

A. Sure I wanted him to have every benefit.

Q. Sure! And you reported no conciliation was offered by your commissioner; you put that in?

A. If it is in there.

Q. Well it must have been considered then, was it not? If you said that, that there was no adjustment or settlement perfected, that means you were considering it, discussing it?

A. Yes; I immediately reported back that nothing was done in my little court.

Q. In other words, Mr. Wheat would not accept it?

A. I don't know; nothing was offered.

Mr. Cook: Move to strike out; you said he offered eighty-five hundred; did you not?

The Court: It may go out.

[fol. 13] Mr. Lytton: Exception.

Q. I want to ask what was Mr. Wheat there for? Representing the Union Central?

The Court: He says he represented the Union Central.

Q. Did he say anything in the whole proceedings?

A. I don't recall.

Q. Did he sit there all the time and keep as quiet as he is now?

The Court: Now let's try this case; go ahead.

Q. Did he say he would not accept it?

A. If he did I did not hear it.

The Court: He might have?

Q. Don't you know he did say he would not accept it and would not agree to any composition?

A. I don't recall he did.

Q. Don't you know, Mr. Jenkins, Mr. Wheat questioned the constitutionality of the Act and said it was void? Said he would not accept any offer at all?

A. I don't recall.

Q. Tell the Court what he did say; let's see what he said; no; I am asking what did Mr. Wheat say?

A. You are trying to put impossible questions to me; things I don't know anything about; the only thing that was said—

Q. What did Mr. Wheat say?

The Court: Let's not try Mr. Wheat.

Mr. Lytton: He is here; he will tell you.

[fol. 14] Mr. Wheat: You bet your life.

Q. Do you recall anything he said?

The Court: He said "no".

Q. I did not hear that; there is some interruption on this side; they are kind of noisy.

A. I have had so many scraps and conversations with that fellow I don't remember a thing about it.

Q. He is a pretty scrappy fellow and he was contending against that law and holding it was unconstitutional.

The Court: He was talking about your client.

Judge Cook: He was talking about the law not being valid.

Q. Did not Mr. Wheat say he was against the law and he would not accept any offer?

The Court: I don't think that has anything—

Judge Cook: Supposing your Honor went in and you had a case like this and you held with me; and when the client comes in and says he won't accept any offer you don't need to make an offer.

The Court: Do you propose to prove by this offer that he said he would not accept any offer at all?

A. I don't recall that he did.

Q. He might have said it?

A. He did not say it in my presence that I recall; he may have said that to you some place else but *but* he did not say it to me.

[fol. 15] Q. Did he keep quiet and not say a word?

A. Oh now Judge I was trying the case and I reported, that, as fairly and clearly as I could—

Q. Did you mean, when you said you were considering the matter, did you mean Mr. Wheat took part in the conversation, too? Do you mean he was helping to consider it, too?

A. I don't understand what you mean.

Reporter:

“Q. Did you mean, when you said you were considering the matter, did you mean Mr. Wheat took part in the conversation, too? Do you mean he was helping to consider it, too?”

A. You mean the hearing of the case?

Q. The witness can answer that.

Mr. Lytton: I object; I object.

Judge: Let him keep quiet.

The Court: He can make an objection.

Mr. Lytton: Wholly irrelevant; wholly; I think we are wasting a lot of time.

Judge Cook: I want him to answer.

The Court: Overruled.

Mr. Lytton: Exception.

The Court: Can you answer that?

A. I cannot; I don't understand it.

Redirect examination of Mr. Jenkins.

By Mr. Lytton:

Q. Will you please state whether or not at that meeting the Debtor made an offer of eighty-five hundred dollars [fol. 16] or any other amount?

Mr. Cook: Asked that before; I asked him; be a repetition.
The Court: And he has denied that, is that correct?

A. He did not have any real, specific offer to make.

Judge Cook: Move to strike out.

The Court: Overruled.

Judge Cook: Exception.

Recross-examination of Mr. Jenkins.

By Judge Cook:

Q. But yet you reported him to the Court, that you considered the question of a loan, you considered a settlement, did you not? Look at the bottom there what you reported?

A. Look up at the top, too.

Q. I am the lawyer in this case; you are not; I am trying to represent this client and when I need you I will send for you.

A. Yes sir; and when I understand your questions I will tell you.

Q. You are a lawyer, too.

A. Not much of one.

Q. You know the meaning of law; you say there were conversations and now you say there was nothing said about it.

A. I don't say there was any consideration.

Q. Why yes; you say no conciliation or adjustment was perfected by you.

A. Where did I say considering it?

[fol. 17] Q. You said from the witness stand.

A. There may have been talk about it like it got in the record.

Q. You don't know what Mr. Wheat and Wright said?

A. Not in my absence.

Q. In your presence? Did not Mr. Wright say to Mr. Wheat "I will give you eighty-five hundred dollars, for the farm," and he said he would not take it.

A. Judge I don't recall he did.

Redirect examination of Mr. Jenkins.

By Mr. Lytton:

Q. Did Mr. Wheat and, strike it.

Q. Did Mr. Wright, the Debtor, or did he not, tell you that this loan which he had been offered in December of 1933, eighty-five hundred dollars, was available to him at that time, at the time of this meeting?

Judge Cook: He has made his report here.

The Court: Overruled.

Judge Cook: Exception.

Reporter:

"Q. Did Mr. Wright, the Debtor, or did he not, tell you that this loan which he had been offered in December of 1933, eighty-five hundred dollars, was available to him at that time, at the time of this meeting?"

Judge Cook: I further object; too late to raise that question; been passed upon when the original petition was filed.

The Court: All goes to the question of whether or not there was an offer of composition.

[fol. 18] Judge Cook: They have waived it.

The Court: Then we won't consider it if they have; overruled.

Judge Cook: Exception.

Q. Did he say that loan was still available at the time of your meeting?

A. No.

Recross-examination of Mr. Jenkins.

By Judge Cook:

Q. How did he happen to say that?

A. I have it in the record that the application was made some nine months before he filed his petition and those loans are automatically cancelled if not accepted within the, a certain period after the granting:

Q. You said he did not say the loan was available; did he say anything on the question?

A. He said he had an offer of a loan of eighty-five hundred dollars some nine months before and it was automati-

cally cancelled because he did not perfect it within sixty days and that no application was then pending for a renewal or any further loan.

Q. But he did not say but what he might get the same loan the next day or any time?

A. I don't know.

Q. Now what did Mr. Wheat say to that, if anything?

A. I don't recall, Judge.

Q. What did he did not say anything?

A. I don't recall.

[fol. 19] Q. Did he raise any objection—strike that out.

Q. Did Mr. Wheat, representing the Union Central Life Insurance Company, there at that meeting, make any objections to your proceeding or your report, on the ground that there had been no offer of composition made prior to that meeting?

Mr. Lytton: We object; we have a right to object; that there had been no objection made.

Judge Cook: If they set the matter down after it was waived.

The Court: Overruled.

Mr. Lytton: Exception.

A. To the proceedings? To the report I made he has nothing to do about that.

Q. I am not wanting to argue it.

A. You asked a couble barreled question.

Q. No.

The Court: Yes you did, Judge.

Q. Well when you filed it did he object to it; make any objections?

A. It was not in my hands.

Q. Well did he?

A. I don't know; I have not followed this case.

Q. No; no; don't you know he never filed any objection before you, on that ground?

A. That is a different question.

Q. Did he ever, at any time, make an objection, before [fol. 20] your Court, before your hearings, and so on? On that ground? Why you know he did not, don't you?

A. I don't quite get this question.

Reporter: "Q. Did he ever, at any time, make an objection, before your Court, before your hearings, and so on? On that ground? Why you know he did not, don't you?"

A. What ground do you mean, Judge?

Q. That no offer of composition had been made?

A. I don't recall that he did.

Q. Well don't you know he did not, now?

A. There was no objection made there.

Mr. Lytton: If it makes any difference we will admit that he did not.

The Court: That ought to settle it.

Q. You mean he never made any objection at any time; alright; if the Court understands it that way that is alright.

Q. Now you got a little confused here about these reports, did you not? Did you not testify here a while ago to Mr. Lytton's questions, that you had some report here where he had a discussion, that they would not turn the beans over unless the Act was held valid?

A. Mr. Wright and the Trustee came to my office—

The Court: He said the Trustee demanded his share and the Debtor said he would not turn them over at that time.

Q. Now, that was not at this meeting there at all, was it? [fol. 21] A. That was in the second state of the—

The Court: December 1936.

Q. You got it mixed up with this?

The Court: No use repeating this; we have it down here; December 1936.

Q. What he said about the beans or some crops was a year afterwards?

A. '36.

Q. And what was that conversation? Where was it?

A. My office.

Q. And he made a remark if the law was held valid he would be glad to turn it over?

A. What is my report? I have the exact language.

The Court: Let him see his report and let him refresh his recollection.

Q. You have a good memory; you are a lawyer.

A. This seems to be quoting my report.

Mr. Lytton: You made a report, Judge.

Q. It is the same in that record.

Mr. Lytton: Here is the original, Mr. Jenkins.

Reporter: "Q. It is the same in that record. And he made a remark if the law was held valid he would be glad to turn it over?"

A. Yes he told me that.

Q. But he said if the law was held void and he got no [fol. 22] benefit from the law, he could not?

A. He did not say he could not; he said he would not.

Q. Was not that what he meant?

A. I don't know.

Q. What did he say, then?

Mr. Lytton: He just told you.

Q. No; he has not: about that part; I did not get that; did he not say that if it was held void he would not be required to turn it over but if not he would? Is not that what he meant?

A. I don't know what he meant; I am just quoting what he said.

Q. Go ahead: Tell what he said.

The Court: He said he would not turn it over at this time but if the law was held valid he would.

A. In substance he said just that.

Mr. Lytton: It is in the Commissioner's report if the Court please.

The Court: Yes, and he has testified to that, too.

Q. Now that statement was made quite a while after you made out the body of this report, was it not? Or was it made, was that statement made at the same time?

A. May I see the report, Judge?

Q. I believe they do bear the same dates, but this must have been made some time after you made the report.

A. This report left my office on the second of December, [fol. 23] approximately, 1936, and I had been working on it since November 6, 1936; some twenty-five days.

Q. Well had you made out the first part of the report, that was one thing, and then this little statement was added on?

Mr. Lytton: Supplemental report.

The Court: Only two things this witness has testified to: one, no composition offered, and the other is that the Trustee demanded the rent and was refused.

Q. No; he did not say refused.

The Court: No use going into the matter, into a lot of cross-examination.

Q. Mr. Al—or Mr. Jenkins, why did you add that little part on that, that—that was not by any statement before you, was it?

A. It certainly was; not immediately but the Debtor himself and the Trustee came to the office.

Q. And you had stricken the land out when?

A. Oh that was—

Q. You did it a lot before?

A. I was working on it.

Q. But had you not a month before that struck the land out, made your rule?

The Court: What difference does it make?

Q. Well I say this man had a feeling and trying to injure. [fol. 24] this man.

A. I took an oath when I took this appointment and I thought that would be fair to his Honor. To get all the facts.

Q. And you did that to injure his man, Mr. Wright, and to injure him, the Debtor?

The Court: Answer the question.

A. Certainly not.

Q. Who asked you to do it?

A. Of my own choosing.

Q. The only thing before you was to dismiss and strike that land out?

A. Yes.

Q. There was no question before you as to any rents, don't you know that?

The Court: Judge: I am going to make some objections and sustain them, myself. We are not getting any place; if you want to challenge Mr. Jenkins—

Q. There is nothing before you about rents?

The Court: I cannot help that; let's proceed.

Q. The witness cannot come in and volunteer such things.

ROSCOE D. WHEAT, called as a witness in behalf of the Plaintiff, being first duly sworn upon his oath, testified as follows:

Direct examination of Roscoe D. Wheat.

By Mr. Lytton:

Q. Your name is Roscoe D. Wheat and you are a practitioner [fol. 25] tising attorney in the State of Indiana and practise a little at Portland, Indiana, is that correct?

A. Correct.

Q. And as such practising attorney you have represented the Union Central Life Insurance Company, the Petitioner herein, in, throughout the pendency of the present proceedings, that is correct, is it not?

A. That is correct.

Q. Judge Wheat, were you at that meeting in the Commissioner's office, in December of 1934?

A. That is the first meeting of the Creditors?

Q. Yes sir.

A. I was.

Q. You may, did you, you stayed throughout the entire proceedings?

A. I think so.

Q. And you heard everything that went on as far as you know?

A. As far as I know.

Q. You may state whether or not at any time during that proceeding, during that meeting, the Debtor made any offer of composition or extension?

Judge Cook: Object; too late. On the ground it is too late. If that was a fact the witness, as counsel for the Petitioner, he should have raised that question, and if not raised at that time it is waived and the case has proceeded

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26] to the Supreme Court of the United States and have never raised that question.

e Court: Overruled.

. Cook: Exception.

Read that question, please.

porter: "Q. You may state whether or not at any time during that proceeding, during that meeting, the Debtor made any offer of composition or extension?"

He did not.

Judge Wheat, did you have any conversation with the Debtor at any time, at the time of that meeting or very shortly before or after it?

I had a conversation with him some short time before, perhaps maybe in the morning of the same day.

Where did that take place?

On the side walk at the northeast corner of the court house.

In Portland?

In Portland, Indiana.

Anybody else present besides you and the Debtor?

No.

Will you state the substance of that conversation?

Judge Cook: Object; unless seen where it is material so as to have a right to object.

e Court: Sustained.

. Lytton: Exception.

27] Judge Cook: We have a right to make our objection.

e Court: Ask a leading question.

Alright; state whether or not at that time you had a conversation with the Debtor, with relation to the making of a loan by him for the purpose of liquidating a mortgage loan held by the Union Central?

Judge Cook: Object; same reasons.

e Court: Overruled.

Judge Cook: Exception.

We did.

Will you please state the substance of that conversation?

I met Mr. Wright, James Wright, James M. Wright, at the northeast corner of the court house on the side

walk; I said "Mr. Wright I am glad to know you were awarded a loan of eighty-five hundred dollars on your real estate and that after you pay certain debts that there will be around eight thousand on Union Central Life" and he says "Well I don't intend to accept it; it is too heavy."

Q. Did you extend to him any statement or opinion that the Union Central would or would not accept such an offer if made to it?

A. I think before he made his answer that I did say in that, "I am very glad you got your loan handled because the Company has advised me that they would accept it or are considering accepting it" and then he said to me "well I don't intend to accept it because it is too big."

[fol. 28] Q. You may state whether or not at any time you have ever said to the Debtor that the Company, the Union Central Life Insurance Company would not accept the offer of eight or eighty-five hundred on that loan?

A. I never did.

Q. Judge what, how often in the past two or three years, we will say, have you seen and had a chance to observe that two hundred acre farm?

A. Five or six times a year or oftener.

Q. How recently have you seen it?

A. Yesterday.

Q. Well will you tell the Court what the condition of the premises is at this time, at the time you saw it? The other day?

Judge Cook: Object; does not tend to prove any issue in the case; not material; no cause for denying the Debtor the benefit of this Act of Congress.

The Court: Overruled.

Mr. Cook: Exception.

A. There are no lawful fences of any kind.

Judge: Move to strike out; same reason.

The Court: Same ruling; overruled.

Judge Cook: Exception.

Q. Did there used to be?

A. Yes; had a good residence; finished stucco; that is [fol. 29] now off and the lath show through.

Judge Cook: Move to strike out.

The Court: Same ruling.

Judge Cook: Exception.

Q. What about the ditch? The ditches?

A. Well they were full of weeds it appeared they had also filled up with dirt; the part I saw as I went along the highway; some time ago I was along the north and south road and the same condition existed there; the barn has not been taken care of; the door is ajar; the roof is in a bad shape.

Q. You mean the door won't close?

A. I don't know; it was open.

Judge Cook: Move to strike out.

The Court: Overruled.

Judge Cook: Exception.

Q. What about the barn?

A. Roof in bad shape; none of the buildings had any care at all.

Judge Cook: Move to strike out.

The Court: Overruled.

Judge Cook: Exception.

Q. Judge, do you know how many times, in the last ten years, that property has been sold for taxes?

Q. Will you read the question?

Reporter: "Q. Judge, do you know how many times, in the last ten years, that property has been sold for taxes?"

[fol. 30] A. Well I know of one time.

Q. Do you know of more than one time?

A. Well I would not state positive; I know it has been advertised more than one time; but I know actually it was sold one time.

Judge Cook: Move to strike out.

Q. When was that?

A. April 1936 or 1937. I don't remember which.

Q. Judge, in looking at that farm or rather the farm house, the buildings on the farm, let me put it that way, as they appeared when you saw them yesterday, state whether or not they have any appearance of having been repaired, painted, roofed, or otherwise rehabilitated, and maintained?

Judge Cook: We object; leading and conclusive.

Q. I say "state whether or not".

Judge Cook: Immaterial and irrelevant; does not tend to prove any issue in the case.

The Court: Overruled.

Judge Cook: Exception.

A. The buildings have, the buildings give the impression very much that they have not; not had any attention whatever over a period of years, except that last year they did put a roof, composition roof of some kind, on the residence or they could not have lived in it.

Judge Cook: Debtor moves to strike out. Does not show [fol. 31] any reason why he should be deprived of the benefits of this Act of Congress.

The Court: Overruled.

Mr. Lytton: That is all.

Judge Cook: Exception.

A. Mr. Lytton.

Q. Pardon me; going back to that meeting of Creditors in December, 1934, at Commissioner Jenkin's office, you may state whether or not you, representing the Union Central Life Insurance Company, examined the Debtor with relation to making or not making an offer of composition and extension?

A. I did.

Q. You may state, in substance, Judge, what you asked him and what he replied?

A. I examined the Debtor on behalf of the Union Central Life Insurance Company and asked him a great many questions, and I asked him if he had any offer to make in the way of composition or extension, to his creditors, and he said he had not; and I said, have you any application at this time, for a loan, on the farm, on your farm, and he said he had not; and I asked if he would make one, and he said he did not know; and I said have you any money at this time and he, I said have you any money at this time you could offer as a composition to your creditors, and he said he had not.

[fol. 32] Cross-examination of R. D. Wheat.

By Judge Cook:

Q. What do you mean when you say he first talked to you about the eight thousand, did you understand he wanted, or

the insurer, the Company wanted to apply it on the debt or accept it for the debt?

A. Well Judge Cook I mean I met Mr. Wright and I said "I want to congratulate you on getting your loan of eighty-five hundred."

Q. Was that to be for the debt or apply?

A. I want to explain.

Q. I want him to answer.

A. Alright; what is it?

Q. I want to know if your Company would accept it on the debt or as the whole thing?

A. I told him whatever he had the Company would accept it.

Q. Did you mean the Company would accept the eighty-five hundred for the whole debt?

A. I mean just what I said.

Q. Did you mean it that way?

A. I am telling you what I know. I don't know what I mean; I know I told him the Company would accept it for its mortgage, yes.

Q. As a credit or the whole debt?

A. In the payment of the mortgage.

The Court: In full?

[fol. 33] A. Yes.

Q. In full?

A. Yes.

Q. So you knew right there and all the time that he had made no proposition, did you not?

A. Well we was not talking about a proposition there.

Q. Please answer my question; you knew at the time, according to your testimony, that he had not made any proposition?

A. He had not.

Q. You knew that?

A. I am telling you.

Q. Did you know that?

A. Well I ought to know.

Q. If you want to quibble that way; did you not know it was your duty to object to such a proceedings as that; as a lawyer?

Mr. Lytton: Object. Highly improper.

The Court: Sustained.

Mr. Cook: Exception.

Q. Well you never did make any objection there, did you Mr. Wheat?

A. There was nothing to object to.

Q. You made no objection on the ground that he had made no offer of composition?

Mr. Lytton: Object to that; offer to what?

[fol. 34] Q. To the proceedings.

The Court: Is it not admitted? That there was no objection made on that ground?

Mr. Lytton: At that time.

A. There was no objection because there was nothing to object to.

The Court: It is admitted and I am going to find there was no objection made at that time there, because it is admitted.

Q. And about that time you carried this from Mr. Jenkins, or it was carried to Ft. Wayne?

A. You carried it and we followed it.

Q. And you followed it just like a Greyhound the last four years?

A. Every place you made us go.

Q. And up there you never made any objection to the proceedings on that ground?

Mr. Lytton: If you want to get in the record of the higher Court, bring it in. We object to any other proof being made.

Q. Well I don't care; I am not going to be bluffed by you.

The Court: I don't believe you could be bluffed by anybody.

Mr. Lytton: Not even by Chief Justice Hughes; he tried it.

Judge Cook: He sat down on you, too. You asked your question; and he never got any further.

Mr. Lytton: You told him you voted for the fellow that appointed him.

[fol. 35] Judge Cook: Yes; I know it; I voted for your Honor, too.

The Court: This will make a good record for the Supreme Court to read.

Judge Cook: All I am interested in, the Supreme Court threw you out of the window; you lost your case.

Q. You did not follow to Washington?

A. I was there in spirit.

Q. At Fort Wayne in the District Court?

Mr. Lytton: Object.

A. I don't know.

Q. Don't you know you did not?

A. There is an objection.

Q. He waived it.

The Court: Let him answer.

A. I don't recall there was any objection made in the proceedings at Ft. Wayne, on the ground that no offer of composition was made, no offer of composition was ever made.

The Judge Cook: Move to strike out the last part.

The Court: That may stand.

Judge Cook: Exception.

Q. You were in Chicago and helped to argue it?

A. Yes, we won there.

Q. Yes, but you did not in Washington.

The Court: Don't you want to finish the case tonight? I am going to adjourn if you don't hurry. I will sustain the objection.

Judge Cook: Exception.

Mr. Lytton: Exception.

[fol. 36] Q. Don't you know you did not make any such objection at Chicago?

A. About what.

Mr. Lytton: Same objection.

Q. About that; object that there had been no offer of composition?

Mr. Lytton: An objection has been sustained to that.

Q. We have a right to show how they agreed.

The Court: They say they made no objection; I am going to find that they made no objection.

Q. I want to show they continued; they never did correct it.

The Court: I am going to adjourn this case in one-half hour.

Q. What is your answer to my question?

A. There is no question.

Q. And you did not raise that question in your brief? At Washington?

The Court: Brief speaks for itself.

Mr. Lytton: Brief speaks.

The Court: Sustained.

Mr. Cook: Exception.

Q. We will offer the brief.

The Court: Alright.

CARMAN ALEXANDER, called as a witness in behalf of the Plaintiff, petitioner, being first duly sworn upon his oath, testified as follows:

[fol. 37] Direct examination of Carman Alexander.

By Mr. Lytton:

Q. Well will you state your name and residence?

A. Carman Alexander.

Q. Residence?

A. Jay County, Indiana.

Q. What is your business Mr. Alexander?

A. Farmer.

Q. Well you were the, appointed as the Trustee in this pending case were you not?

A. Yes sir.

Q. And you were appointed about in December of 31, were you not?

A. I was thinking it was in '35. Was it not? I am not just sure about that.

Q. '35; I guess it was '35.

A. I think that is right.

Judge Cook: '35.

Q. You made a lease, did you not, with the Debtor, James M. Wright, concerning the occupancy and tenancy of the two hundred acre farm in question here?

A. Yes sir.

Q. And under, by the terms of that lease, what rental was the Debtor to pay?

A. Two-fifths of the small grain and one-half of the hay.

Q. When did you first rent, when did your first rental [fol. 38] come due under that lease?

A. In '36.

Q. And you received two-fifths of the grain, of the wheat in '36?

A. Yes sir.

Q. And of the oats?

A. Yes sir.

Q. How about the corn or soy beans?

A. I received the oats and, just a minute, please.

Q. You say you received the wheat and the oats?

A. Yes sir.

Q. Now I am asking about the corn or soy beans, either or both.

A. Well I received two checks there, in June, the first, '37, and turned, the total was \$548.87.

Q. That covered what? Hay, and wheat?

A. That covered the wheat and oats and all of the grain, and beans and the wheat and oats, which is, that was the '35 and '36 crop.

Q. Did you have any conversation with Mr. Wright, the Debtor, concerning the corn or soy beans, along in December, of 1936?

A. Yes sir.

Q. Or in February of '37?

A. Yes sir.

Q. What was the substance of that conversation?

[fol. 39] A. I met Mr. Wright on the street in Portland and we talked about the crops and he said "now I will not turn over any more crops to you until after this has been settled; if I win this case I will turn over the crops, and if I am defeated I am going to keep all of them."

Q. Do you remember of going with Mr. Wright to the office of the Conciliation Commissioner and demanding of the Debtor your share under the lease of the corn?

A. Yes sir.

Q. That was in '36? Was it not?

A. That was, I believe it was.

Q. And did you make a demand on the Debtor for that?

A. At the same time that I met Mr. Wright he and I went

up to Mr. Jenkin's office and I told Mr. Jenkins what he had said to me; shall I repeat what Mr. Jenkins said too?

Judge Cook: You are not asked that; we will object to that.

Q. But what did Mr. Wright say?

A. Mr. Wright said he would not turn over anything until after this thing was settled.

Q. At that time you were trying to get your portion of the corn, were you not?

A. Yes sir.

Q. And he refused to give it to you?

A. Yes sir.

Q. Now did you get any share of the crops that were [fol. 40] harvested in the year 1937?

A. No sir.

Q. Of the '38 crops, I believe you have received your share of those that have been harvested to date?

A. Yes; wheat; I have not got the oats nor the corn yet.

Q. That is all.

Cross-examination of Carman Alexander.

By Judge Cook:

Q. Mr. Alexander don't you remember that when you talked in the Fall of '36 about the corn that Mr. Wright told you he would have to repair the roof on the house and you made no objection to it; the corn, he used the crops for that purpose?

A. No sir, no conversation like that.

Q. Don't you remember him telling about the roof?

A. He asked me to pay for it.

Q. And did he not mention it?

A. Yes.

Q. And did he not say he was going to sell the corn and put a roof on?

A. No.

Q. You know he did?

A. I don't know if he —, with what; I know he put a roof on.

Q. You did not pay for it?

A. No sir.

Q. Why did you not use some of the \$548.00 to do [fol. 41] that?

A. Because Judge Click did not give me no order to do that; I could not spend any money without an order from the Court.

Q. Did you ever ask for such an order?

A. No but I asked, I talked to my Conciliation Commissioner.

Q. You did not ask Judge Slick?

A. No.

Q. Don't you know, to be fair, that he used this corn to repair the roof?

A. I saw it was repaired; I don't know how he got the money.

Q. Where did you think he got the money?

A. I could not tell you.

Q. Did you go out and inquire?

A. No.

Q. Did you inquire what he done with the corn?

Mr. Lytton: Object.

The Court: Sustained.

Mr. Cook: Exception.

Q. Can't I cross-examine the witness?

The Court: He says he knows he put a roof on but he don't know where he got the money.

Q. He does know?

Q. You were out and saw the roof?

A. Yes.

Q. And you did not ask him where he got the money?

[fol. 42] A. No, it was none of my business.

Q. And you say now you did not know he used the corn for that purpose?

A. No, I don't know.

Q. And he did not tell you that?

A. No.

Q. Do you know how much corn you were entitled to there that year? Your two-fifths?

A. No, I had no way of knowing.

Q. Ever see how many acres were out?

A. Yes.

Q. How much would your share come to?

A. I can give you an estimate.

Q. Do you know how much? Did you know, did you not know it was three hundred *fift*?

A. No, I did not know.

Q. How many acres of corn were out?

A. I could not tell that now.

Q. How do you know what it would be?

A. Well I don't know; I am telling you I don't know what it would be.

Q. You don't know how much corn was out?

A. No.

Mr. Lytton: Object.

The Court: Sustained.

Judge Cook: Exception.

[fol. 43]. The Court: You are not helping at all.

Judge Cook: Al- right.

Q. Now you have a, you know that there was no wheat or oats raised in the year '37? On this farm there, the two hundred acres?

A. I paid no attention to it.

Q. Did you not do your duty and go out and look?

A. When he told me he would not turn it over—

Q. Did you not look it over?

A. I was there several times.

Q. He had no wheat in '37?

A. In '37?

Q. Yes; the dry year.

A. I could not say.

Q. You never went to see?

A. I was there.

Q. Did you not look?

A. I covered the question when he would not turn it over.

Q. You want to argue?

A. I can, if necessary.

Q. You know the '37 corn is there in the crib for your use? Did he tell you that?

A. He told me that, too.

Q. And you knew that but you did not inquire about the wheat or oats?

[fol. 44]. A. I did not know what was in there for '37; you are talking about '38.

Q. He told you that?

A. No, he did not.

Q. And you never went out to see?

A. I have been there several times.

Q. What were you there for if you did not look about the field and crops?

A. I had business out there.

Q. Did you not look about the crops?

A. Yes I looked after—

Q. Don't you know there was none raised in '37? No wheat at all?

A. No, I did not say there was.

Q. Don't you know there was none raised?

A. I said I did not have any; I did not get any; I don't know whether there was or not.

Q. You never looked about any?

A. No object; he told me he would not turn it over.

Q. I did not ask that; you have some feeling here?

A. No.

Q. Why do you keep repeating that? Why do you want to keep stabbing me with that; you have some feeling here?

A. No; not a bit.

Q. Well, now, in '38, that is this year?

[fol. 45] A. Yes.

Q. Have you been out there this year to look about it?

A. Yes sir.

Q. How much wheat did he have out this year?

A. I can tell in a few seconds.

A. He had 74.30 worth, my share.

The Court: You got that, did you?

A. I got that.

Q. And you took that and stored that in the elevator at Bryant, did you not?

A. I did not; I sold it.

Q. And it brought how much?

A. Seventy-four thirty.

Q. Know how many acres were out?

The Court: That is not charged is it?

Q. Now, the corn, do you know how much was sold this year?

A. No.

Q. How does it come he gave you that, when you said he would not give it to you?

A. I am talking about '37.

Q. But in '38 why he did give it to you?

A. That is right.

Q. And don't you know that the oats were in store on the farm there?

A. I know about them.

[fol. 46] Q. You can get them any time you want them?

A. I was there when they were threshed.

Q. Why did you not get them?

A. They were not in shape to take to the elevator; they brought a smaller,—they could not determine how much loss; they are right there in the out house.

Q. They are under your control?

A. As far as I know they are. In the other house.

Q. And the corn crop is under your control?

A. Why I think so.

Q. All you did not get was the wheat?

The Court: Got nothing in '37?

Q. I believe you said you did not know the corn was stored up? I will prove that.

Q. Of course you will get your share of the corn?

A. Yes.

Redirect examination of Carman Alexander.

By Mr. Lytton:

Q. How many cribs are there out on that farm?

A. There is one, one crib, the two hundred acre farm?

Q. Yes.

A. It is just a slat crib; a picket fence crib.

Q. And you say there is some corn in that and that is '38 corn?

A. No.

[fol. 47] Q. That is '37 corn, is it?

A. Well it would have to be '38 if any in there to amount to anything; I don't think there was much there.

The Court: '37; have not harvested the '38.

Q. As a matter of fact was there any corn there?

A. But very little if any; could possibly have been some corn stored in the old house; I was not up there; I did not know there was any there.

Q. When you say that in '38 they gave you some wheat, that was '38 wheat, was it not?

A. Yes.

Q. That was not '37?

A. No, '38; that was this year.

Q. Let me see that lease, will you, please, Judge? I show you a paper which has been marked Petitioner's Exhibit 2, and ask you if that is a copy of a lease to Mr. Wright, from you, as Trustee?

A. Yes sir.

Q. We will offer that in evidence, if the Court please.

Judge Cook: No objection to it.

The Court: May be admitted.

Judge Cook: I suppose it will show all these papers are in evidence.

The Court: Yes.

And exhibit 2 was admitted of record.

[fol. 48] Q. You know Mr. Longerbone?

A. Yes.

Q. Do you recall going on to the Wright farm with Mr. Longerbone in February of 1937?

A. February 6, 1937, yes sir.

Q. What did you go out there for?

A. Went out and, to ask them about the crops.

Q. Did you ask about any crops at that time?

A. I did.

Q. Do, did you get them?

A. No sir.

Q. That is all; oh yes; the money that you have received, as Trustee, will you state whether or not any of that has ever been paid or distributed, by you, to the petitioner company, or Union Central Life Insurance Company?

A. No sir.

Recross-examination of Carman Alexander.

By Judge Cook:

Q. Has not the Union Central Life Insurance Company refused to accept it?

A. I never offered it.

Q. Did not Mr. Wheat say he would not accept it?

A. No.

Q. Don't you know they have persistently refused to take any?

A. They never asked me.

Q. Don't you know they won't accept it?

[fol. 49] A. They never asked.

Q. And yet you saw Mr. Wheat every day or so?

A. I saw him.

Q. And the agents were at your office every day?

A. I don't have an office.

Q. Well you have a home, I guess?

A. No.

Q. They never asked for any rent?

A. No.

Q. When was, well, where was this contract made?

A. In Judge Moran's office; in Portland, Indiana.

Q. Was that at the first Creditors' meeting?

A. No, sir, I don't think so.

Q. The first one was in '34? Yes, this was '34; and was Mr. Wheat there?

A. Not to my knowledge; I did not see this contract wrote but Mr. Moran was my attorney and he drew this up and when I came into town he told me about it.

Q. Well was Mr. Wheat there?

A. No.

Q. Well did you tell Mr. Wheat that you had got a contract?

A. No.

Q. Did he know about it?

A. I could not say.

Q. And you have asked whether you should turn over [fol. 50] this property to the Company or him?

A. No.

Q. You never paid any taxes or any improvements on the farm?

A. No sir.

Q. Did Mr. Wheat ever come to you and say that he objected to this renting of the farm?

A. No sir.

Q. Well don't you rather believe Mr. Alexander that he sort of refused to accept it, is not that what you thought?

Mr. Lytton: Object; what he thought.

The Court: Sustained.

Q. He never asked?

A. Yes;

The Court: He says he did not.

Recross-examination of Byron G. Jenkins.

By Judge Cook:

Q. Mr. Jenkins do you remember of the contract being made by Mr.—strike that out.

Q. At this first meeting of the Creditors, did you not appoint Carman Alexander as Trustee?

A. You don't mean it that way; the first meeting of Creditors.

Q. Well when was it?

A. Well there were two meetings of creditors.

Q. Well at which meeting did you appoint him?

A. That is in the second stage of the Act.

Q. Well you appointed Mr. Carman Alexander, Trustee?

[fol. 51] A. That is right; that is a meeting of the creditors in the second stage of the Act, you mean?

Q. What date? At the time you struck the land out?

A. No; long before that.

Q. Before you struck the land out?

A. You are confused about the time.

Q. It says in February '36; had you stricken the land out at that time?

A. I did not strike no land out; that was Dec. 36.

Q. Don't you know in the second report you recommended the land be struck out?

A. That has no relation to the question just before.

Q. Was that about this or before?

A. I did not strike out, strike it out; I recommended it.

Q. Well of course; when did you do that?

A. Long after this contract.

Q. This was in '36 when was it then? In '37?

A. Well as I recall the date on the report I made in the second stage of the case, my report was made in December of '36, now what is the date of the contract?

Q. It is '36, too; February.

Q. It must have been '35; at any rate you appointed Mr. Alexander and entered into this contract.

A. I appointed him as Trustee.

Q. And did not Mr. Wheat know that?

[fol. 52] A. Yes.

Q. Was he there when that was done?

A. I don't know.

Q. But you know he knew it?

A. Oh yes, he knew it.

Q. Did you tell him?

A. I don't know.

Q. Did he ever make any objection to this lease contract?

A. No.

Q. Did he ever make any objections on the ground that Wright had made no offer of composition?

Mr. Lytton: Going back to what we spent an hour on?

Q. I don't know if I asked him that.

Mr. Lytton: You did fourteen times. We object.

Q. I believe I ought to have an answer.

The Court: No——

Q. So, I have not got the original; this is not the original.

A. No; we have all lost the original; I think it is at Decatur.

Q. May be. And Mr. Alexander when, went on and administered the estate under that until you recommended the land to be stricken out; is not that a fact?

A. Yes.

Q. Did you continue as Conciliation Commissioner and have Mr. Alexander also as Trustee, after you recommended [fol. 53] the land to be stricken out?

A. I did not have the case; it was referred to Wm. B. Duff, Special Master, at Fort Wayne.

Q. You have Mr. Alexander in yet? You have never discharged him?

A. Yes. No. No.

Q. Even after you struck the land out you left him in and let him receive the crops?

A. I did not strike any land out.

Q. You recommended it?

Mr. Lytton: This comes back on appeal all that time; it is obsolete.

The Court: Sustained.

Mr. Cook: Exception.

Q. It was not on appeal.

Mr. Lytton: Been very few minutes when it was not on appeal.

Q. Well you fellows have been fighting it all the time; but you get beat all the time.

EVERETT LONGERBONE, called as a witness in behalf of the Petitioner, being first duly sworn upon his oath, testified as follows:

Direct examination of Everett Longerbone.

By Mr. Lytton:

Q. Will you state your name and address?

A. Everett Longerbone; Jay county, Portland, Indiana.

Q. Farmer?

[fol. 54] A. Farmer.

Q. Operate and own a farm there?

A. Yes.

Q. Are you acquainted with the Debtor?

A. Yes I know him.

Q. Acquainted with his farm? The two hundred acre tract on the north side of the road?

A. I know what it is, where it is at.

Q. How often have you passed that in the last two or three years?

A. Oh I go past there from, every two or three weeks.

Q. How recently have you passed there?

A. I passed there one day last week; I was past there one day last week.

Q. Will you state what the appearance of the farm is, with respect to the buildings, fences, ditches, and any other features that come to your mind?

Judge Cook: Object; not material; does not tend to prove or disprove any issue in the case; would be no cause to deprive him of the rights under this law.

The Court: Overruled.

Judge Cook: Exception.

Reporter: "Q. Will you state what the appearance of the farm is, with respect to the buildings, fences, ditches, and any other features that come to your mind?"

[fol. 55] Judge Cook: For the further reason that under the law it was the duty of the Trustee to keep them in repair and not the duty of the land owner; that is the law.

The Court: Overruled.

Judge Cook: Exception.

The Court: Answer the question.

A. Well it is in bad state of repair.

Judge Cook: Move to strike out; same reasons.

The Court: Overruled.

Judge Cook: Exception.

Q. What was it about five or six years ago?

Judge Cook: Object; same objection.

The Court: Overruled.

Judge Cook: Exception.

A. It was in pretty fair shape and good looking buildings.

Judge Cook: Move to strike out; same reasons.

The Court: Overruled.

Judge Cook: Exception.

Q. Has it been going down in appearance?

Judge Cook: Be a conclusion; object.

The Court: Overruled.

Judge Cook: Exception.

A. Yes it has.

Q. Over a period of how many years, would you think?

A. Five or six years I would think.

[fol. 56] Judge Cook: Object; on the ground that it was the duty of the Trustee to keep it in repair.

The Court: Same ruling. Overruled.

Judge Cook: Exception.

Q. You heard Mr. Alexander testify?

A. Yes.

Q. Do you recall going with him to call on Mr., the Debtor, in February of 1937, at his farm?

A. Yes sir.

Q. Did you hear a conversation between Mr. Wright and Alexander?

A. I did.

Q. Will you give the substance of it; what did Mr. Alexander say to him and he to him?

Judge Cook: Same objection.

The Court: Same ruling; overruled.

Judge Cook: Exception.

A. Well he said I come over to demand the rest of the crops.

Q. Mr. Alexander?

A. Yes.

Q. And what did he say?

A. Mr. Wright said "I am not going to turn over any more until this is settled".

Judge Cook: Move to strike out; same grounds.

The Court: Overruled.

[fol. 57]. Judge Cook: Exception.

Cross-examination of Everett Longerbone.

By Judge Cook:

Q. You have a great deal of interest in this, have you not?

Mr. Lytton: Object.

The Court: Overruled.

Mr. Lytton: Exception.

- A. I cannot say as I have, no.

Q. Why you appeared at Fort Wayne and testified in another case? Against Mr. Wright?

A. I did.

Mr. Lytton: Object.

The Court: Goes to his credibility.

Mr. Lytton: Exception.

Q. Did you hunt up Mr. Alexander to go out, or why did you go out?

A. He called me over the telephone and asked me to go out.

Q. You have some feeling against Mr. Wright, and his son?

A. Not a bit.

Q. But you have some feeling against them?

A. I went to tell the truth.

Q. And your daughter is working in Mr. Wheat's office?

A. That is right.

Mr. Lytton: Object.

Q. I think he is biased.

The Court: Go ahead; go ahead.

Mr. Lytton: Well I think that covers all the questions as [fol. 58] near as I can gauge it; all the questions between

the petitioner and the answer. Between the petition and the answer.

Judge Cook: I would like to take a few minutes recess; we can offer our evidence in a few minutes.

Defense:

EDISON R. BARNHART, called as a witness in behalf of the defense, being first duly sworn upon his oath, testified as follows:

Direct examination of Edison R. Barnhart.

By Mr. Cook:

Q. Your name?

A. Edison R. Barnhart, Jackson township, Jay county, Indiana.

Q. How near do you live to James Wright?

A. It corners.

Q. Are you acquainted with the value of land in Jackson township in the neighborhood of which the James M. Wright farm is located?

A. I think I am, for that neighborhood.

Q. How long have you lived there?

A. All my life.

Q. Have you been acquainted with the James M. Wright land and buildings and improvements? And character of the soil?

A. Yes sir.

Q. What, in your opinion is the two hundred acres worth?

A. Take the farm as a whole I would say thirty dollars [fol. 59] an acre.

Mr. Bytton: No cross-examination.

JOHN HART, called as a witness in behalf of the defense, being first duly sworn upon his oath, testified as follows:

Direct examination of John Hart.

By Judge Cook:

Q. Your name and address?

A. John Hart, Green Township, Jay County.

Q. How near the Wright farm?

A. About three miles.

Q. How long have you known it?

A. Probably thirty years.

Q. Are you acquainted with the value of real estate in the neighborhood in which it is located?

A. Well I would say about thirty dollars an acre.

Mr. Lytton: We will admit he is.

Q. What, in your opinion, would it be worth at this time?

A. About thirty dollars an acre.

Cross-examination of John Hart.

By Mr. Lytton:

Q. Does that include the improvements?

A. Yes.

Redirect examination of John Hart.

By Judge Cook:

Q. May I ask the witness a question? I will ask this; on November 24, 1934, when he filed his original petition and October 11, 1935 he, what would you say would be the value [fol. 60] of the land?

Mr. Lytton: Object; not material in this case.

Q. The question of what he means now, whether he means now or then.

The Court: He may answer.

Mr. Lytton: Exception.

A. I would say thirty dollars.

The Court: What do you say?

Same question? (To Mr. Barnhart?)

Mr. Barnhart: Thirty dollars. I don't know how it was sold at that time, but I would say about the same.

Cross-examination of Mr. Barnhart.

By Mr. Lytton:

Q. Mr. Barnhart, did you include the improvements in giving your value?

A. At the present time, yes.

JAMES M. WRIGHT, Debtor, called as a witness in his own behalf; testified as follows, having been previously sworn:

Direct examination of James M. Wright.

By Judge Cook,

Q. State your name.

A. James M. Wright.

Q. Are you the Debtor here in this case?

A. Yes sir.

Q. How old are you?

A. Seventy-nine.

[fol. 61] Q. And how long have you lived on this farm?

A. Well I owned it twenty years: lived there the last ten.

Q. Of what does your family consist of, if any?

A. Well it consists of a wife.

Q. Is your wife living?

A. No, my wife died right when they started foreclosing on this.

Q. That is in '36?

A. No it was earlier than that; four years ago when they foreclosed.

Q. And what other, what other members of the family have you?

The Court: Does that make any difference, Judge?

A. Well I have got a son and a daughter.

Judge Cook: I want to show the family.

Judge: The Court: What for?

Judge Cook: To show they can help him refinance this.

Q. What did you say?

A. Well I have a son and a daughter.

Q. How old is the son?

A. Well he is, I guess, about forty now.

Q. He is here?

A. Yes.

Q. And the other gentleman your son-in-law, what is his name?

A. John Kuhn.

Q. Is your daughter living?

A. Yes.

[fol. 62] Q. How old is Mr. Kuhn and your daughter? He is married to, about?

A. Yes; she is, I don't know, I think around forty-two.

Q. Is your son, his name is Walter?

A. Walter.

Q. Is your son and your daughter and your son-in-law in good health?

A. Yes.

Q. And is your son-in-law living on the farm? On the two hundred acres?

A. Yes.

Q. When did you first make this loan of the Union Central?

A. Well it has been about twenty years when I took the first loan.

Q. And did you pay interest on it? What was the amount of the loan originally?

A. Nine thousand on the two hundred acres.

Q. How many years did you pay interest at six percent?

A. Ten years.

Mr. Lytton: Object. Objection sustained.

Mr. Cook: Exception.

Q. They say he never paid interest.

The Court: No.

Q. When was the loan renewed?

A. What?

Q. When was the loan renewed?

[fol. 63] A. Well it has been pretty near ten years since we renewed it.

Q. Well it was in '25?

A. '25.

Q. And after it was renewed now tell the Court what improvements were made upon the land, since the last time it was renewed?

A. Well just labor and work around on the place.

Q. No, the buildings.

A. Oh we put the house and barn both on after the loan was made.

Q. What did they cost?

A. They cost seven thousand dollars.

Q. And did you and your son and son-in-law do the work to put up these buildings?

A. Well we done a good bit of it.

Q. Well what did you estimate that your labor was worth for the ditching and fencing? Did you ditch and fence the land?

A. Yes sir some.

Q. What was your labor worth doing that?

A. Well I think about five hundred dollars.

Q. And what was it worth in putting up the house and barn and other buildings?

A. Well I think around one thousand dollars, the labor on that.

Q. And have you kept up the interest on the loan until '32?

A. I think it was pretty well kept up to '32.

[fol. 64] Q. Why did you not pay any after that?

Mr. Lytton: Object; object to that.

The Court: Sustained.

Judge Cook: Exception.

Q. I will have to offer to prove:

We offer to prove, if witness is allowed to testify, that after 1932 on account of the failure of crops and the low prices of farm productions the income from the farm was not sufficient to pay the taxes and interest, and keep up the interest on this loan. I believe that ought to go in, your Honor. That was not his fault that he could not pay the interest.

The Court: We are not trying that question here.

Judge Cook: Well it, your Honor, you will have to pass on it; it shows he could not pay the taxes.

The Court: That has nothing to do with this at all, Judge. Any more than the question of whether his wife is living or dead.

Judge Cook: I suppose the objection is sustained?

The Court: Yes.

Judge Cook: Exception.

Q. Now, you may tell the Court whether you were present at the first creditors' meeting?

A. Yes, I was.

Q. When was that meeting? Where was it?

[fol. 65] A. In Jenkins' office in Portland.

Q. Who was there at that meeting?

A. Well I don't know whether I could—

Q. Well was Mr. Wheat there?

A. Yes.

Q. And Mr. Jenkins? And you?

A. Judge Aiken was representing me then.

Q. Did you have any talk with Mr. Wheat at the court house corner before you went?

A. I have no recollection of ever talking to him at all.

Q. Did he ever tell you that he would accept the eight thousand or eighty-five hundred dollars?

Mr. Lytton: Object to the leading question.

Q. This is impeachment; we have a right.

The Court: Overruled.

Mr. Lytton: Exception.

Q. Well I asked if he ever stated that to you?

A. Well state your question over.

Q. That he would take eighty-five hundred for your whole loan?

A. No; no he never did.

Q. Well then you went over to the creditors' meeting there?

A. Yes.

Q. And did you say anything there before the Commissioner?

A. Yes; it was talked about the loan that I got; what I could get.

[fol. 66] Q. Well tell what the fact is about the loan?

A. Well I put in an application in the Louisville bank and the best offer they give me was eighty-five hundred on the two hundred and they afterwards sent a communication and said they could not put on but eight thousand.

Q. Did you tell that before the Commissioner and before Mr. Wheat?

A. Yes.

Q. And what did they say?

A. They would not accept it.

Q. Give Mr. Wheat's language, what he said?

A. Well I cannot hardly tell just what he said; he would not accept what was offered.

Q. Well, of course, Mr. Jenkins did not say anything about it, did he?

A. No, I don't think so.

Q. And did he make any note or memo of that; write it down?

A. Well I don't know whether he did or not; I could not say.

Q. Well did Mr. Wheat give any reason why he would not accept the eight thousand?

A. No, he did not, only it was less than the loan.

Q. Did he make any objection there before the Commissioner, that you had not made any offer of composition?

The Court: It is admitted, Judge; why repeat it?

Q. Well, was there any Trustee appointed at that meeting [fol. 67] or was that done later?

A. No, I think, it seems to me like the Trustee was appointed before that.

Mr. Lytton: The record would show.

Q. Who appointed him?

A. Mr. Jenkins.

Q. And was Mr. Wheat there when he appointed him?

A. I could not say whether he had come in yet or not when he appointed him.

Q. Did you ever say anything after Mr. Alexander had been appointed and you had signed the lease?

A. Yes we talked about the rental and there being a Receiver.

Q. And to Mr. Wheat?

A. Yes.

Q. And where was he? Where was that?

A. There in Jenkins' office.

Q. Did Mr. Wheat make any objection to that?

Mr. Lytton: Objection; immaterial.

The Court: He says he did not make any objection; what is the use of proving a thing that is admitted?

Q. If he does not speak; he must speak.

Q. Did Mr. Wheat come to the farm to see you?

A. I think a couple of times; he had papers he wanted signed, but I did not sign any.

Q. This crop of '36 consisted of what?
[fol. 68] A. We had a oats and corn—

Q. And that was all turned over to Mr. Alexander?

A. All but the corn and it was used in the repair of the house.

Q. Did you tell Mr. Alexander that?

A. Yes.

Q. When? Where?

A. I think in Portland and once when he was there at the house.

Q. And what did he say?

A. Well he did not do anything; said he had no orders to do anything.

Q. Did he object?

A. He did not say anything; he did not say whether he was in favor or objected.

Q. Was that necessary to save the house?

A. Yes; the house leaked like a sieve.

Mr. Lytton: Object; leading.

Q. I thought I would hurry that; to get the condition of the house.

A. Leaked all over; we could not repair it any longer; we had repaired it.

Q. Did any other place need repair?

A. Yes; we had to plaster the ceiling; it had fallen off; and paper it; it run up toward \$400.00, the work done.

[fol. 69] Q. All of their two-fifths of the corn?

A. Yes it took the corn.

Q. Did Mr. Alexander ever come to you and demand the corn of you?

A. No.

Q. Now tell, take the year '37 crops, did you, what crops did you have in '37 on the two hundred?

A. Corn.

Q. And where is that now?

A. Stored on the place there now.

Q. Where?

A. In an old house on the place.

Q. Properly stored so it is protected from the weather?

A. Yes; I don't think anything is damaged.

Q. Any wheat that year?

A. No wheat.

Q. Did you tell him you had any wheat there?

A. I told him the '37 crop was there.

Q. What did he say?

A. He has made no demand.

Q. He is still serving?

A. Yes.

Q. He said you said one time you would not give him the crop; what did you say about that, now?

A. Well I never told him I would not give him the crops; [fol. 70] I told him the Supreme Court was going to pass on the matter pretty soon and he sued me in the lower courts and let me give bond, and I said I would like to find out before I go any further.

Q. And what if it was held valid?

A. If valid he would get them; if void I suppose the lower courts would take it; made me give bond.

Q. You had no wheat or oats?

A. No.

Q. Was that what you call a dry year?

A. Yes a very dry year.

Q. You told them you had the corn in the crib?

A. Yes.

Q. And they never came and got it?

A. No.

Q. When it comes to '38 you raised some wheat?

A. Yes.

Q. Did he take that wheat?

A. Yes.

Q. And what about that?

A. Stored at the elevator at Bryant.

Q. They took it away?

A. Yes.

Q. And the corn is not harvested?

A. No.

[fol. 71]. Q. You intend to give the two-fifths?

A. Yes.

Mr. Lytton: Object. Strike the answer.

Q. He has a right to say whether he will give it to him or not.

The Court: The answer may stand.

Mr. Lytton: Exception.

Q. Do you intend to refuse to give that to him?

A. No.

Q. When it is harvested?

Q. What is this land worth of yours there; or was it worth in '34 when you filed the petition?

A. Oh I suppose sell about thirty dollars an acre.

Q. And when you filed the amended petition in '35, October, what was it worth?

A. I don't think any change.

Q. And now, what is it now?

A. About the same price.

Q. What about the ditches on the land there, have you neglected them?

A. No, they have been cleaned about every two years.

Q. Well that is cleaned under the law?

A. Yes that is the law.

Q. And they only clean them every two years?

A. Yes.

Q. And has that been done?

[fol. 72] A. Yes, must have been cleaned out.

Q. Any tile drain that drains the inside of the land?

A. Yes.

Q. What condition are they in?

A. They are all right; what there is.

Q. What condition are the fences in?

A. Not very much fencing on the place; had some there the last ten years, though; we put some on.

Q. Has Mr. Alexander used any of this one thousand dollars to repair the land?

A. No.

Q. Has he ever paid any taxes?

A. Not that I know of.

Q. Did you have any means to pay the taxes?

A. No.

Q. Why?

A. We turned over the two-fifths and had nothing left to pay them with.

Q. Have you any other income now, except from this farm?

A. No.

Q. And could you have an income from this farm further than interest or taxes—

A. No.

Q. Have you used any of the money of the income from this farm to buy anything or make any other improvements?

[fol. 73] A. Not to buy a cents worth of nothing.

Q. You lived on the farm?

A. Yes and my son-in-law. We lived out of his three fifths.

Q. And you have to live out of the same three-fifths and your son and your daughter?

A. Yes.

Q. I will ask you, Mr. Wright whether you can re-finance or reorganize or rehabilitate yourself as this Act provides by the payment of the fifteen thousand against it now?

A. Not at that rate; but I think I can finance it at the value of the land.

Q. On the value?

A. On the appraised value of the land.

The Court: Well you cannot finish this case tonight; that is evident. My docket is full for tomorrow.

I don't know; I have tried and tried to get you to finish this case tonight; and you won't do it.

Mr. Lytton: No chance tomorrow?

The Court: I have two or three matters set; if you care to come and wait.

Mr. Lytton: I would prefer to do that.

The Court: How long will it take?

Judge Cook: Several hours.

The Court: If it will take several hours I cannot finish.

Mr. Lytton: I don't see how it can; I have one rebuttal [fol. 74] witness, take five minutes.

The Court: Tomorrow at ten o'clock.

October 22, 1938: 9:55:

Continuing the direct examination of James M. Wright.

By Judge Cook:

Q. Referring to the eighty-five hundred dollars mentioned in the Conciliation Commissioner's report, you may state whether or not that application was granted and, a year before or was it shortly before that creditor's meeting?

A. Well I think, I don't think it was a great while before the creditors' meeting.

Q. About how much, how long a time?

A. Oh I reckon three months probably.

Q. Well state whether or not it was a year before?

The Court: He said about three months.

Q. There is a statement it was a year before; is that correct?

The Court: He says three months; that is sufficient.

Q. Do you know?

A. I don't think it was a year.

Q. Alright; now there is also a matter testified to by Mr. Jenkin's about settlement for certain beans; you may tell the Court whether that applied to the two hundred acres or whether there was ever beans raised on the two hundred acres?

A. No.

[fol. 75] Q. At no time?

A. No.

Q. '37 or '38?

A. No.

Q. What land was it raised on?

A. On the eighty that the Stock Land Bank at Ft. Wayne had a mortgage on.

Q. Stock Land Bank where?

A. Ft. Wayne.

Q. You did not raise any in '36?

A. No.

Q. Tell whether or not you ever went to Mr. Jenkin's office and made a statement there about the beans as to the two hundred acres?

A. No.

Q. Did you make any statement about the beans on the south eighty or stray eighty as we call it?

A. I don't think it was talked about.

Q. Tell whether or not the beans raised on the stray eighty were all turned to Mr. Jenkin's?

Mr. Lytton: This is not in here.

Judge Cook: It relates to the stray eighty south of that.

The Court: If there were no beans raised on the land in question that is sufficient.

Q. I wanted to show the ones on the stray eighty, were [fol. 76] turned over. They were all turned over?

A. Yes.

Q. Just to meet the question; he was mistaken.

The Court: I don't think Jenkins talked about the beans.

Q. Oh yes; they would turn over the beans if the law was held valid.

The Court: He says yes.

Q. He puts on the back of his report "beans".

Q. Now, we come to the crop question, did you make any statement to Mr. Jenkins about the crops on the two hundred acres, that you would not turn over?

A. No, I never did.

Q. Now, in the Fall of '36, after you started repairing the house, did Mr. Alexander come to your house? With Mr. Longerbone?

A. Well yes he come there.

Q. And what was said about, between you and he, about the crops of '36? Or what did he say to you? And what did you say to him?

A. Well he said he come to demand the crops of me.

Q. What did you say?

A. I said I had been thrown out of the bill.

Q. What did you mean?

A. In the court at Ft. Wayne.

Q. And what is the fact that the Union Central having [fol. 77] brought a suit that was finally tried in Jay, I mean Adams county? And they filed suit to remove you from the land?

A. Yes.

Q. How much bond did you give in the Adams to cover the rent on the two hundred acres?

A. One thousand.

Q. And was that appealed to the Supreme Court?

A. Yes.

Q. And it was rendered against you?

A. Yes.

Mr. Lytton: Immaterial.

The Court: Let it stand; go ahead.

Mr. Lytton: Exception.

Q. He had given bond.

The Court: Judge go ahead; I have other people waiting here; go ahead.

Q. He was objecting; and I thought wanted to speak to the Court.

The Court: If you don't go ahead I am going to adjourn this case until next week.

Q. Now at the creditors' meeting at Portland, in the Fall of 1934, I believe you stated a while ago you were there?

A. Yes.

Q. Are you acquainted with a gentleman by the name of Mr. Omart?

A. Yes.

Q. And what is his first name?

[fol. 78] A. I cannot give it.

Q. His official position in Portland?

A. He, agent for the Union Central.

Q. Did he have an office there?

A. Yes.

Q. And as you understood it represented the Company?

A. Yes.

Q. And what, if anything, did you hear him say there about not scaling down this debt?

A. He said the company would not take off anything.

Q. Now, who is this, what is——

Strike it out.

Q. Would it be objectionable if I should give a little idea of the location of the land?

The Court: No, I don't think that is necessary at all; what is the difference where it is located?

Q. I can ask just a couple of things; describe just briefly whether there is not an eighty acres just east of this land?

A. Which?

Q. The two hundred there and there is one eighty to the east; where the house is on?

A. Yes.

Q. And there is an eighty right west of that?

A. Yes.

Q. And a forty right south?

[fol. 79] A. Yes.

Q. And laying north of the road?

A. Yes.

Q. There is an open drain? Where is the open drain?

A. Most on the east eighty.

Q. Open or tile?

A. Open ditch.

Q. How long has it been there?

A. Oh for fifty years.


Q. Is it somewhat washed out and larger now?

A. Yes; it is large.

Q. How often has it been cleaned out?

A. Every two years.

Mr. Lytton: We are doing the same as yesterday; we covered this yesterday.



Q. I ask you this, did that and the tile drains drain the land off like the ordinary drains in the neighborhood?

A. Yes it does; of course it has not got so much drainage as some farms.

Q. Did you ever lose any crops by reason of the lack of drainage?

A. No not by lack of drain, not by lack of a ditch being out of repair; nothing like that.

Q. I believe your fences are about the same as they have been for ten years?

[fol. 80] A. About the same.

Q. Did you ask Mr. Alexander to furnish seed and make repairs on the farm?

A. He was asked to furnish some grass seed and he said he had been ordered to furnish nothing.

Q. Well did he say who had ordered that?

A. No; he did not say.

Q. And you understood, strike that out.

Q. Oh, did you have any talk with Mr. Wheat, the gentleman representing the Insurance Company, there, about this rental with the Trustee, Alexander?

A. No, nothing only he was sent by Jenkins.

Q. Well I mean at that time, when was that? Where was it?

A. That was in Jenkin's office.

Q. And what did you say and Mr. Wheat say about this lease?

A. Well he said Alexander was not renting their farms.

Q. Well had you told him that he was managing your farm?

A. Yes.

Q. And was that about all that was said about it?

A. That is all that I remember.

Cross-examination of James M. Wright.

By Mr. Lytton:

Q. You testified that you spent about seven thousand dollars on those farm buildings, is that right?

A. Yes.

Q. When did you do that?

[fol. 81] A. Well it was after I had bought the land and had had to put a mortgage on it.

Q. Well how many years ago was it? That you built these buildings?

A. Well it has been about ten or twelve or fifteen, years ago, maybe.

Q. So, when you say that you spent seven thousand dollars improving the property; by those buildings, you mean that you did that ten or twelve years ago?

A. Yes.

Q. Now that farm, who farms that land?

A. Well me and my son-in-law and my son has been farming it all the time.

Q. You and your son and son-in-law? Do your son and son-in-law have any other business?

A. No.

Q. They live right on the farm, and you do, too?

A. And I do, too.

Q. They have no other income, except out of that farm have they?

A. No.

Q. And you have not?

A. No.

Q. Can you tell us just roughly approximately what the income has been from this two hundred acres about, per year, for the last four or five years?

[fol. 82] Judge Cook: Debtor objects; not material; no reason why he could not have the benefits sought here.

The Court: I think just as material as the testimony showing he spent six or eight thousand dollars improving it. Overruled.

Judge Cook: Exception.

Q. Will you tell us what has been the average income, per year, from this two hundred acre tract?

A. Well that would be hard to tell, as we had several wet seasons that we did not get anything hardly.

Q. What is the highest income in the last five years?

A. The highest?

Q. Yes.

A. Well I expect '36 was as good a year as we have had.

Q. Yes sir; well what was it in '36?

A. Well I think, according to the papers, here, we turned them over for the two-fifths, we turned over over Five Thousand and something or five hundred.

Judge Cook: \$548.70, Mr. Alexander says.

Q. That was two-fifths?

A. Two-fifths of the wheat and oats and between three and four hundred dollars worth of corn spent for the repair of the place, and that was the best year.

Q. What was the worst year you have had in the last five years?

A. Well I expect last year brought in the least of any we have had.

[fol. 83] Q. How much?

A. I don't know; nothing there but the corn last year, and it has not been taken away yet; something like five hundred bushels, I judge, and two-fifths of it.

Q. I am asking about the lowest income from the two hundred acres?

A. Well I tell you there is not much income out of three-fifths when you pay all the expenses.

Q. I am talking about the fifth, five-fifths, not two-fifths or three-fifths, the whole income?

A. Well I was trying to get at what the income would be of the three-fifths.

The Court: Well if five hundred is two-fifths, five-fifths would be

Q. I am asking for '37, Judge; he says that was the worst year; that was the worst; '36 was the best year.

A. I said about five hundred bushels of corn; at forty cents would be two hundred dollars.

Q. Is that the entire income from that farm for the year?

A. I forgot, yes, for last year.

Q. And that represented the entire income of you and your son and son-in-law?

A. Well my son did not farm on the two hundred acres; he did not have any corn on it; that was what me and my son-in-law had.

[fol. 84] Q. Alright; what did your son get in the way of income last year?

A. Well he was not farming on the two hundred acres.

Judge Cook: Not material; we object.

Q. What did he farm?

A. The eighty acres that the Supreme Court lawed out across the road, and the eighty that belonged to the Stock Land Bank.

Q. Did he have any income from them in '37?

A. He got a little income.

Q. How much? \$200.00 or \$50.00?

A. Probably he got \$200.00 clear of expenses.

Q. Now you said yesterday that you could re-finance this two hundred acres on the basis of the appraised value, did you not?

A. Yes.

Q. Suppose the Court should open appraisals, appoint appraisers in this case, and they appraised that land at ten thousand dollars, could you refinance it?

A. No, I don't think it would be refinanced at that much.

Q. So that is until you know what value the appraisers appraise it at, you don't know whether you could refinance it or not?

A. It has been appraised twice, and I have been going by that appraisement.

[fol. 85] Q. You don't know how, you don't know though, until the Court appoints appraisers and you know what the appraisement is?

A. A year or so ago Jenkins had it done; the Court appointed three appraisers.

Q. When?

A. When I went into the bill on Jenkins; he appointed them; he is Conciliation Commissioner; he appointed the appraisers.

Q. When?

A. Well he appointed them in '36, I think.

Q. And you say they made an appraisal?

A. Yes.

Q. Is that filed in this court?

A. I think so.

Q. Have you an appraisal, Judge?

Judge Cook: No.

The Court: Do you know what it was appraised at?

A. It was appraised, I think, at \$6200.00.

Judge Cook: The Witness knows.

Q. I never heard of an appraisal being filed.

Judge Cook: I never saw any in looking over the papers; I don't know now that I ever saw any.

Q. That was the judgment of Judge Wheat, that they were never in.

The Court: You said you could re-finance it according to the appraisal, what would you consider fair? What could [fol. 86] you re-finance it for?

A. Well I think at the appraised value they have had.

The Court: You don't know what it would be; what could you re-finance it for?

A. I, well I could not say just how much they would put on it.

Judge Cook: The witness did not seem to understand the question. Answer the question.

Judge Cook: He said "could you pay"?

The Court: I mean what sum could you raise and pay?

A. Well I am pretty sure I can raise the sum that it has been appraised at; \$6000.00, \$6200.00.

The Court: That is as high as you could go?

A. I don't know; I could, I don't know whether I could get any more.

Q. Do you know you could get that?

A. I think I could get that, yes.

Q. Would you expect if the appraised value was six thousand dollars, you think you could get a loan for six thousand, the full amount of the value?

A. I don't know whether I could get quite the full amount but I think I could get most of it out.

Q. As a matter of fact you probably could not get more than one-half or two-thirds of that value, could you?

A. Yes I could get more than that on it.

Q. What percent can you make loans of the full value?

[fol. 87] A. The loaning company always sets out an appraisal and they will appraise it at their appraisal, they will put one-half on it but they might appraise it higher than the government appraisers put on it.

Q. In other words, the basis of the loan is usually for one-half?

A. Yes of the appraisal they put on.

Q. Now, Mr. Wright, you have not paid any taxes on that property since '29, have you?

Judge Cook: That was the duty of the Trustee, and we object to that.

A. Well I don't remember just when; I have not paid any since I filed my bill, I know that.

Q. That was in '34?

A. Yes.

Q. And you had not paid for a good many years before?

A. Not a great many; might have been a year or two, before.

Q. And you have not paid any interest that came due after — strike that.

Q. And you have not paid any interest on the loan on this property, since the interest that came due after the year 1929, have you?

A. Well, I don't think it has been that long since I paid interest.

Q. Well when was the last year for which you paid in-
[fol. 88] terest on that loan?

A. Well I expect the year before I filed my bill, any way.

Q. That was 1933?

A. Yes.

Q. You said a minute ago that on the two hundred acre tract you did not raise any soy beans in '36 or '37?

A. No.

Q. You did raise corn those years on that land?

A. Yes.

Q. I think that is all.

OFFERS IN EVIDENCE

Judge Cook: Debtor now offers Debtor's Exhibit A, the original petition in bankruptcy.

Mr. Lytton: O. K.

Judge Cook: Show it read in evidence.

And Debtor's Exhibit A was admitted of record and read in evidence.

Judge Cook: We can read that and argue it.

Mr. Lytton: Petitioner's Exhibit 1 was not offered yesterday.

The Court: Show it admitted, and read in evidence.

Judge Cook: Debtor offers Exhibit B, with reference to Byron Jenkins, etc. I skipped the other.

Admitted and read in evidence.

Judge Cook: Offers in evidence Exhibit C. Foreclosure of mortgage in Adams Circuit Court.

Mr. Lytton: I don't think it is material. I don't object to [fol. 89] form of this.

The Court: I don't see it. Will be admitted.

Judge Cook: I am going to offer the Judgment. The rule is when you offer the Judgment you must offer the pleadings.

The Court: May be admitted.

Judge Cook: Debtor now offers paragraphs three to five and six as Debtor's Exhibit D E F (of the petition, in which there are certain admissions). I am offering claims in the petition.

Mr. Lytton: I object; but it is before the Court; it is the pleadings; we certainly have to stand by our allegations.

The Court: You using their pleadings?

Judge Cook: It won't harm anyone; it is a safer practise.

The Court: Alright; let it in.

Judge Cook: Debtor offers Exhibit G; this shows there was a composition offered and refused and the petition was amended, and matters of that kind. It comes from the Clerk of this Court. Part of the record. Shows the petition was refused and there was a creditors' meeting and an offer of composition the, and some matters of that kind.

Mr. Lytton: We are not objecting to this exhibit except as to counsel's statement as to the contents.

Judge Cook: It speaks for itself.

The Court: May be admitted.

[fol. 90] Judge Cook: Defendant's Exhibit H offered in evidence.

Mr. Lytton: No objection.

The Court: Admitted and read.

Judge Cook: Exhibit I is offered in evidence; petition for review.

Mr. Lytton: No objection.

The Court: Admitted and read.

Judge Cook: Exhibit J offered in evidence.

Mr. Lytton: No objection.

The Court: Admitted and read.

Mr. Lytton: We could stipulate that all papers could be considered admitted and read in evidence.

Judge Cook: We have gone so far. I would rather offer the evidence.

The Court: I don't see what object you could have.

Judge Cook: If this has to be appealed.

The Court: They are willing to admit all the files.

Judge Cook: Well I would rather offer in evidence.

Mr. Lytton: Mr. Cook you could control the evidence on appeal by a praecipe.

Judge Cook: What we thought the proper thing for the record.

The Court: You prefer to have you own way and take the time.

Judge Cook: Well it won't take very long.

The Court: It is not going to take very long this morning.

Judge Cook: Offer in evidence K and L.

[fol. 91] The Court: Admitted and read in evidence.

Judge Cook: Defendant's Exhibit M.

The Court: Admitted and read.

Judge Cook: Offer in evidence Exhibit N. Objections before the Commissioner upon which he acted.

Judge Cook: Page 2 and 3 of transcript offered as Exhibit O and P.

Mr. Lytton: Anything in the printed transcript will be no objection as to form, but as to relevancy.

Judge Cook: On pages 8 and 9 Q and Q-1.

Judge Cook: Exhibit R.

Admitted and read; on page 9.

Judge Cook: Defendant's Exhibit S page 11 of transcript. Also Exhibit T, page 11-12 and 13 of transcript.

Judge Cook: Exhibit U on page 39 and 40 of transcript.

Judge Cook: Exhibit V on page 42 of transcript, 42-43 and 44.

Well, Exhibit W and X and X-1-X-2. Exhibit Y and Z and Z-1 on page 44.

The Court: Judge you are wasting a lot of time here. You could control all of this in your praecipe.

Judge Cook: On page 49-50-51, Exhibits AA, AA-1 and AA-2. BB-BB-3, pages 51-52-53-54. Page 54. Exhibit CC on page 54.

The Court: Does the Debtor rest?

[fol. 92]

Rebuttal

Mr. Lytton: I ask leave on behalf of the petitioner to amend by interlineation the petition on paragraph C of paragraph 8 of the complaint, changing the figures 1932 to 1929 to conform to the proof.

The Court: Granted.

Judge Cook: I would like to also have the privilege to amend my answer to your petition; just one or two pages; I will send you a copy; it is an amended answer.

Mr. Lytton: New answers.

Judge Cook: It merely sets up this thing and that the Supreme Court has passed on this and that is the law of the case and you are bound by it.

Mr. Lytton: If that is all it has in it.

The Court: You will send a copy to Mr. Lytton and the Clerk?

VIRGIL PARRISH, called as a witness in behalf of the petitioner, being first duly sworn upon his oath, testified as follows:

Direct examination of Virgil Parrish.

By Mr. Lytton:

Q. Your name?

A. Virgil Parrish.

Q. Your residence is Cincinnati?

A. Yes.

Q. And you are connected with Union Central Life Insurance Company in the capacity of Associate counsel, I believe?

[fol. 93] A. Correct.

Q. And you are familiar with the proceedings which have been mentioned in this case?

A. Yes I am.

Q. And as a matter of fact on behalf of the Union Central at the home office you have general supervision of all that litigation?

A. I have.

Q. Mr. Parrish, in that connection, state whether or not you are familiar with the accumulated amount of the debt on this two hundred acre tract as it is at the present time, the payments of taxes and the payments or non-payments of interest on this particular loan?

A. I am.

Q. Will you please tell us what the present amount of the debt is, including principal, interest, any taxes advanced and any fire insurance premiums advanced?

A. Well I have the current memo which I take it there is no objection to my referring to? Our total is \$15,903.68.

Q. Has the petitioner paid any taxes on this two hundred acre tract?

A. Not since the year 1929.

Q. The petitioner?

A. The petitioner has advanced all the taxes that have been paid since 1929.

[fol. 94] Q. For all years since?

A. The years through the current payable taxes.

Q. Will you tell the Court the last year for which interest was paid on this loan by the Debtor?

A. The last actual payment of interest was in March, 1931.

Q. For what year?

A. Which was for the year 1930, however.

Q. Well has the interest for any year since 1930 been paid by Debtor?

A. No.

Q. You may state whether or not the Debtor has paid to the Petitioner any money on account of any item or phase since this payment in 1931, covering interest for 1930?

A. No, the Debtor has not.

Cross-examination of Virgil Parrish.

By Judge Cook:

Q. But Mr. Parrish, you do know that the Debtor has paid the two-fifths of the rent or has it on hand for the years 1936, 1937 and the present year?

A. I only know the things that are in the record.

Q. Of Mr. Carman Alexander who testified here?

A. Only as it appears in the record and reports.

Mr. Lytton: That is all.

COLLOQUY

Mr. Lytton: Now, may I suggest, would the Court like to have us prepare any memo or would you prefer to have the oral argument on this matter, what is the Court's desire?
[fol. 95] The Court: We have no time to hear argument.

Judge Cook: I would like to have time to prepare a Special Finding and present it.

The Court: You will have to prepare your special findings.

Court's Indicated Findings

The Court: I will find under the evidence that there was no offer of compensation or extension at any time.

That the Trustee demanded a share of the crops in December, 1936 and that Debtor said he would not turn them over at that time but if the law was held valid he would turn them over and if held invalid he would keep them all.

That the Company further said they would accept eight thousand at one time in 1934 and never refused to accept either the eight thousand or eighty-five hundred.

That the buildings on the land are in a bad state of repair.

That in 1936 or 1937 I don't know, '37, there were no crops delivered to the Trustee under the lease; that there was a roof put on the house.

Judge Cook: And it will be fair to say they had to repair it and all those things.

The Court: Under this evidence I will find that the land is worth now \$30.00 an acre; 200 acres, \$6000.00.

That the total indebtedness is \$15,903.

That no taxes have been paid since 1929 and the, by the Debtor, and no interest has been paid since 1930, but that the taxes and insurance have been paid by the Union Central Life Insurance Company.

Judge Cook: Of course, under the cross-complaint, the cross-petitioner will ask to have the land appraised.

The Court: That has nothing to do with it, with the Special Finding of Facts.

Judge Cook: It is presented by the Cross-Petition.

The Court: No, but what facts do you want me to find?

Judge Cook: No facts; just to order it reappraised. You would have to find it would have to be appraised and open appraisals.

The Court: I would not find it would have to be appraised in a Special Finding of Facts. I am talking now about the Special Finding.

Judge Cook: You would have to find that in Special Findings.

The Court: I am asking now if there is anything further with reference to the Facts.

Judge Cook: It might be that would flow from the Facts.

Mr. Lytton: I would like Finding if we may have same,

concerning the Financial Status of the Debtor; his income.

The Court: Well you can tell that from his testimony. What he said about it. And put in the facts. I have forgot.

Mr. Lytton: Of course that is important on that possibility of rehabilitation.

The Court: But in the Special finding of facts he discloses with reference to his income and his son and son-in-law.

[fol. 97] Judge Cook: If these facts are found the matter of whether the land should be appraised would be a Conclusion of Law.

The Court: Yes.

Mr. Lytton: The same as he will give the relief we ask for.

Mr. Lytton: We want Wright's cross-examination.

Judge Cook: Copy of it for us.

Mr. Lytton: Would you send a copy of Judge Slick's findings.

Judge Cook: And me too.

The Court: Want to file briefs?

After some argument—Judge Cook insisting upon oral argument—same was continued to be set for oral argument.

Farther Defense

OFFERS IN EVIDENCE

After the above hearing Judge Cook, the Debtor and Court Reporter, by agreement of Court and counsel for petitioner, made the following record to be included in the defense:

Page 59 of Transcript admitted and read in evidence as Exhibit DD.

EE page 56, 57, and 58 of Transcript.

FF pages 59-60-61 and 62.

CC pages 62, 63, 64, 65, and 66.

Taken from Appellees brief filed in the Circuit Court of Appeals at Chicago on June 24, 1937.

G. G., Exhibit GG and Exhibit HH admitted and read in evidence.

Appellants petition for rehearing.

[fol. 98] Judgment of Circuit Court of Appeals admitted and read as exhibit II.

Petition in the United States Court for Writ of Certiorari admitted and read as JJ.

Brief in opposition to petition for Certiorari admitted and read as exhibit KK.

Reply brief to Opposition brief, admitted and read as exhibit LL.

Appellant's brief on merits Supreme Court U. S. admitted and read as exhibit MM.

Appellees brief and Supplemental brief, admitted and read as exhibits NN and OO.

Opinion of the Supreme Court, admitted and read as PP.

NOTE.—Judge Cook took the exhibits he introduced in evidence and Mr. Lytton took the exhibits introduced in evidence by him as counsel for the Petitioner.

And that was all of the evidence introduced in the foregoing matter and taken in shorthand by me.

Coral Gibson-Nellans, Shorthand Reporter, 103 South Liberty St., Plymouth, Indiana.

[fol. 99] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 100] [Caption omitted]

[fols. 101-102] IN UNITED STATES CIRCUIT COURT OF APPEALS,
SEVENTH CIRCUIT

In the Matter of JAMES M. WRIGHT, Debtor

6968

JAMES M. WRIGHT

vs.

UNION CENTRAL LIFE INSURANCE COMPANY et al.

Appeal from the District Court of the United States for the Northern District of Indiana, Fort Wayne Division

MINUTE ENTRY—October 10, 1939

Now this day come the parties by their counsel and this cause comes on to be heard on the transcript of the record

and briefs of counsel and on oral argument by Mr. Samuel E. Cook, counsel for Appellant, and by Mr. Arthur S. Lytton, counsel for Appellees, and the Court heard the same — takes this matter under advisement.

[fol. 103] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR
THE SEVENTH CIRCUIT, OCTOBER TERM AND SESSION, 1939

No. 6968

In the Matter of JAMES M. WRIGHT, Debtor

JAMES M. WRIGHT, Appellant,

vs.

THE UNION CENTRAL LIFE INSURANCE COMPANY, WILLIAM D.
REMMEIL, Trustee, Appellees

Appeal from the District Court of the United States for
the Northern District of Indiana, Fort Wayne Division

OPINION—Filed November 3, 1939

Before Evans, Treanor, and Kerner, Circuit Judges

EVANS, Circuit Judge:

Appellant is the same debtor as in appeal No. 6960, decided by this court, November 3, 1939.

This appeal involves a different tract of land, covered by a different mortgage. It is the same debtor and the same 200 acre farm which were before this court in Wright v. Union Central Life Ins. Co., 91 F. (2d) 894, and before the Supreme Court in 304 U. S. 502. An entirely different question, however, is now presented.

Through the present appeal, debtor seeks to review an order of the District Court directing the sale of the 200 acre farm in question. Briefly, the fact bases of the questions raised appear in the following chronological statement:

[fol. 104] Chronological Statement

1915. Original mortgage was executed by debtor.
Oct. 1, 1925. Debtor executed renewal mortgage to secure mortgage of \$9,000.

Chronological Statement—Continued

- Oct. 14, 1931. Debtor conveyed three of the 40-acre tracts of the 200 acres to relatives.
- Oct. 30, 1934. Foreclosure suit by insurance company in state court v. Mortgagor and grantees. Debtor filed original Sec. 75 proceedings.
- Dec. 19, 1934. Conciliation Commissioner's report of no conciliation. Petition of debtor to be adjudged a bankrupt.
- Dec. 21, 1934. District Court approved Commissioner's report.
1935. Debtor filed a petition under Sec. 75.
- Apr. 13, 1935. Quitclaim of 120 acres by grantees to debtor.
- May—2, 1935. Order of adjudication.
- May 27, 1935. Mortgage decree entered—Indebtedness fixed at \$11,975.
- July 20, 1935. Land sold at sheriff's sale for \$12,174.31 to appellee.
- Oct. 30, 1935. Trustee's lease with debtor for 2/5 crop rental.
- Jan. 3, 1936. Insurance company filed motion to dismiss Sec. 75 proceeding.
- July 20, 1936. Insurance company obtained sheriff's deed which was recorded same day period of redemption expired.
- Sept. 6, 1936. Insurance company's motion to strike all real estate from schedule of debtor and trustee make final report and be discharged as to that specific real estate.
- Nov. 6, 1936. Answer of debtor asking the petition be overruled and to continue proceeding until action on appeal in state court possession proceeding.
- Dec. 2, 1936. Conciliation Com. filed a supplemental report in which he stated that the debtor harvested about 300 bushels of soy beans and that 2/5 could be turned over for rent but debtor declared he would hold them until Frazier Lemke act was declared constitutional.
- [fol. 105]
- Dec. 3, 1936. Conciliation Com. recommended that creditor's petition for striking real estate should be sustained.

Chronological Statement—Continued

- Dec. 14, 1936. Court approved report.
- Oct. 26, 1937. State Supreme Court's judgment upholding creditor's right to possession.
- May 31, 1938. U. S. Supreme Court's decision (304 U. S. 502) holding 200 acres properly before bankruptcy court.
- July 22, 1938. Insurance Company filed petition to dismiss proceeding.
- Sept. 22, 1938. District Court overruled debtor's motion to dismiss petition of insurance company.
- Oct. 5, 1938. Debtor filed answer.
Debtor filed cross petition for appraisal and to be allowed to redeem at appraised value at extended redemption period of March 4, 1940.
- Oct. 18, 1938. Insurance Company answered cross petition asking for immediate sale under Sec. 75(s) (3), alleging its request takes precedence over debtor's request for appraisal.
- Oct. 19, 1938. Debtor's amendment to answer.
- Jan. 3, 1939. Amendment to debtor's answer claims defense of res adjudicata.
- Jan. 30, 1939. Court made findings of fact and conclusions of law, the substance of the latter being that a public sale of 200 acres be had.
- Feb. 11, 1939. Decree of District Court appealed from, ordering a sale of the 200 acres at public sale without any relief to debtor.
- Mar. 8, 1939. Petition for appeal allowed.

Described narratively, it appears that debtor, in October 1925, executed and delivered to appellee a \$9,000 mortgage on his 200 acre farm in Jay County, Indiana, which mortgage was a renewal of one previously given in 1915. In January, 1934, appellee instituted a foreclosure suit in the [f5l. 106] state court and secured a final decree, May 27, 1935. The property was sold, July 20, 1935, and a sheriff's certificate issued which was followed by a sheriff's deed, July 26, 1936. There was due on the mortgage at the time the foreclosure decree was entered, the sum of \$11,975.

This debt had increased to \$16,000, at the date of the entry of the order in question, to-wit, February 11, 1939.

The substance of the court's findings upon which the order here attacked was based, we give: Debtor has made no offer of composition at any time; debtor refused to turn over to trustee upon his demand, 1936 share of crop rentals, until Sec. 75 (s) should be declared valid; no crops were turned over to trustee in 1937; indebtedness now amounts to \$15,903.68; no part of the principal has been repaid; no taxes have been paid by debtor since 1929; no interest since 1930; the buildings are in a bad state of repair; the \$7,000 allegedly put into the property by the debtor was expended more than 12 or 15 years ago; the taxes and insurance since 1929 have been paid by appellee; the value of the property is \$6,000; the debtor, his son, and son-in-law live on and farm the property and none has outside income; the total income of the farm in its best year, 1936, was a little more than \$2,000 and in its worst year, 1937, about \$200; debtor admits he could not refinance said property at an appraised value in excess of \$6,000, and there is no evidence that he could do it at that amount; in 1934 appellee offered \$8,000 for the property; except for part of the 1936 crops, debtor has sold the entire crops and retained the proceeds; debtor's income is grossly insufficient to enable him to reduce or liquidate in any substantial degree his outstanding liabilities or pay current interest or taxes; there is no evidence upon which may be based a reasonable hope or expectation of debtor's financial rehabilitation; there is no evidence of compliance by debtor with the requirements of Sec. 75 (s) and he has failed and refused to obey the order of the court to make payments semi-annually; mortgagee has made a written request for public sale of the property.

These facts amply supported by competent evidence not only authorized the entry of the order which the court entered, but made such action imperative. Section 75 (s) (2) (3). *Wright v. Vinton Branch*, 300 U. S. 440.

We are satisfied that a court of bankruptcy may, when [fol. 107] the facts, as here, warrant it, or if the terms of its order have been deliberately violated by the debtor, or if the provisions of the statute have been violated, direct the sale of the debtor's property within the three years, referred to in Section 75 (c) (3).

We are also convinced that the Act of March 4, 1938, does not extend the three year period referred to in Section 75 (s) (2).

Upon proper fact showing it is likewise clear that the court may, upon creditor's petition, direct a judicial sale at which the creditor may bid in the property.

Upon the sale being made to the said creditor, the debtor's rights are lost in said property, save only that he has ninety days to redeem any property so sold by paying the amount for which said property was sold, together with 5% per annum interest.

The order is Affirmed.

[fols. 108-109] IN UNITED STATES CIRCUIT COURT OF APPEALS,
SEVENTH CIRCUIT

6968

In the Matter of: JAMES M. WRIGHT, Debtor

JAMES M. WRIGHT

VS.

UNION CENTRAL LIFE INSURANCE COMPANY, WILLIAM D.
REMMELL, Trustee

Appeal from the District Court of the United States for the
Northern District of Indiana, Fort Wayne Division

JUDGMENT—November 3, 1939

This cause came on to be heard on the transcript of the record from the District Court of the United States for the Northern District of Indiana, Fort Wayne Division, and was argued by counsel.

On Consideration Whereof: It is now here ordered, adjudged and decreed by this Court that the Order or Decree of the said District Court in this cause appealed from, be, and the same is hereby affirmed.

Petition for rehearing covering 44 pages filed Nov. 18, 1939 omitted from this print.

It was denied, and nothing more by order of Dec. 21, 1939.

[fols. 110-113] Additional ground of petition for rehearing, filed Nov. 20, 1939, omitted in printing.

[fol. 114] IN UNITED STATES CIRCUIT COURT OF APPEALS

[Title omitted]

ORDER DENYING PETITION FOR REHEARING—Dec. 21, 1939

It is ordered by the Court that the Petition for a Rehearing of this cause be, and the same is hereby denied.

[fol. 115] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR
THE SEVENTH CIRCUIT

[Title omitted]

APPELLANT'S PRAECIPE FOR PORTIONS OF THE RECORD TO BE
INCORPORATED IN THE TRANSCRIPT—Filed March 23, 1940

To the Honorable Frederick G. Campbell, Clerk of Said
Circuit Court of Appeals:

In compliance with Rule 10 of the Supreme Court of the United States, the Appellant hereby indicates the following portions of the record to be incorporated into the transcript and certified and transmitted to said Court to be considered on this appeal, namely:

1. The original typewritten transcript of said cause now on file in the office of the Clerk of said Court.

2. And attach to said transcript a manuscript copy of the following proceedings in said Circuit Court of Appeals to-wit:

(1) The order and date of docketing said cause in said Court.

(2) The order showing the submission of said cause in said Court and date thereof.

(3) Certify that the papers, briefs and proceedings in said cause show Samuel E. Cook, appeared and conducted

said proceedings in said Court for said Appellant and also the names of Counsel for Appellees.

(4) The opinion of the Circuit Court of Appeals announced in said cause on November 3, 1939.

(5) The final judgment and order of said Court of November 1939, affirming the judgment of the District Court. [fol. 116]. (6) Appellant's original typewritten petition for a rehearing and ruling thereon with date.

(7) A copy of this praecipe.

That the Appellant represents to the Court of Appeals that on the 2nd day of January, 1940 he mailed an affidavit to said Supreme Court for leave to prosecute the appeal in this case in forma pauperis.

(That in a proposed appeal in a similar case the Clerk of said Court informed his Counsel that the original certified transcript in said cause would be accepted in said Court on the hearing of said affidavit and a petition for writ of certiorari.)

All to be used as a basis for a petition to said Supreme Court for a writ of certiorari directed to said Court of Appeals to send up said cause for review and an appeal under the provisions of the bankruptcy Act from said judgment to said Supreme Court.

Dated this 22 day of March, 1940.

Respectfully submitted, Samuel E. Cook, Counsel for Appellant.

[fol. 117] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 118] SUPREME COURT OF THE UNITED STATES

ORDER EXTENDING TIME WITHIN WHICH TO APPLY FOR WRIT
OF CERTIORARI

Upon consideration of the application of counsel for the petitioner in the above entitled cause, and good cause having been shown,

It Is Ordered that the time within which petition for writ of certiorari may be filed herein be, and the same is hereby,

extended for a period of twenty-five days from March 21, 1940.

Frank W. Murphy, Associate Justice of the Supreme Court of the United States.

Dated this 19 day of March, 1940.

[fol. 119] SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed May 20, 1940

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Seventh Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

Endorsed on Cover: In forma pauperis Enter Samuel E. Cook. File No. 44,308, U. S. Circuit Court of Appeals, Seventh Circuit, Term No. 51. James M. Wright, Petitioner, vs. The Union Central Life Insurance Company, et al. Petition for a writ of certiorari and exhibit thereto. Filed April 12, 1940: Term No. 51 O. T. 1940,

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FILE COPY

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FILED

APR 12 1940

CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 51

JAMES M. WRIGHT,

Petitioner,

vs.

**THE UNION CENTRAL LIFE INSURANCE COM-
PANY, WILLIAM D. REMMELL, TRUSTEE.**

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SEVENTH CIRCUIT AND BRIEF IN
SUPPORT THEREOF.**

SAMUEL E. COOK,

WM. LEMKE,

Counsel for Petitioner.

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 51

JAMES M. WRIGHT,

Petitioner,

vs.

**THE UNION CENTRAL LIFE INSURANCE COM-
PANY, WILLIAM D. REMMELL, TRUSTEE.**

**PETITION FOR WRIT OF CERTIORARI TO THE
UNITED STATES CIRCUIT COURT OF APPEALS
FOR THE SEVENTH CIRCUIT AND BRIEF IN
SUPPORT THEREOF.**

*To the Honorable Charles Evans Hughes, the Chief Justice
and the Associate Justices of the Supreme Court of the
United States:*

Preliminary.

Your petitioner, James M. Wright, a citizen of the United States, residing in Jay County, Indiana, respectfully shows:

That he is aggrieved by a judgment of the Honorable United States Court of Appeals for the Seventh Circuit.

That the opinion of said court in said cause was filed in the office of the Clerk of said court on November 3, 1939 (R. 153-157).

That judgment was duly rendered against the petitioner on said opinion (R. 157).

That the petition for a rehearing herein was filed on November 18, 1939, and denied on December 21, 1939, and said judgment runs from said last-named date (R. 157, 158).

That said Court of Appeals in its opinion affirmed a judgment of the United States District Court for the Northern District of Indiana, Fort Wayne Division (R. 153, 157).

That said District Court refused to allow the petitioner to redeem the land herein at its appraised value and refused to give him the relief provided for in subsection (s) of the Bankruptcy Act of August 28, 1935, but ordered it sold at public auction and allowed said creditor to bid its debt at said sale (R. 57-59).

Your petitioner presents his petition to the Supreme Court of the United States for a Writ of Certiorari requiring said Circuit Court of Appeals to send up the record in said cause and prays that said judgment be reversed.

That he files with this petition and brief in support of the same the original record, Volumes 1 and 2 on file in said Court of Appeals and a transcript of the proceedings therein duly certified by the clerk of said court. That heretofore the petitioner has filed in this Court his affidavit to prosecute this appeal *in forma pauperis* and he prays the Court to file and docket his petition, and affidavit and said record and transcript and that they be heard upon said record, transcript and affidavit and his typewritten petition and brief in support of said petition and such brief as may be filed by the respondents.

I.

Summary and Short Statement of the Matters Involved.

The material matters, leading up to the decision of the Court of Appeals are in substance as follows:

(1) This is a proceedings in bankruptcy under Section 75 of the Act of March 3, 1933 for Agricultural Compositions and Extensions and its amendments and amended subsections (s) of the Act of August 28, 1935 and its extensions (11 U. S. C. A. 203 (s)).

(2) Petitioner is the same debtor and the same 200-acre farm which was before this Court in *Wright v. Union Central Life Insurance Company*, 304 U. S. 502, 82 L. Ed. 1490-1502.

In the latter this Court overruled the Court of Appeals and held this land was in bankruptcy and among other things held that Congress had the power to extend the State statutory period of redemption from one year to three years. It also held Congress intended by these Acts to rehabilitate the insolvent farmer and discharge him from his oppressive indebtedness.

(3) After the case came back to the District Court the respondent, the Union Central Life Insurance Company commenced over again against the debtor. Pardon a digression.

Although the Supreme Court held in the recent *Kalb* case, 308 U. S. 433, 84 L. Ed. 281 that:

"Congress set up in the Act an exclusive and easily accessible statutory means for rehabilitating distressed farmers who, as victims of a general economic depression, were without means to engage in formal Court litigation." * * * "that these (Conciliation) Commissioners should upon request assist any farmer in preparing and filing a petition under this section and

in all matters subsequent thereto arising under this section and farmers shall not be required to be represented by an Attorney in any proceedings under this section." (47 Stat. 1473 (q).)

Then this Court adds:

"In harmony with the general plan of giving the farmer an opportunity for rehabilitation, he was relieved after filing a petition for composition and extension of the necessity of litigation elsewhere and its consequent expense."

Kalb case, 84 L. Ed. 281.

(4) Contrast this with the conduct of the creditor as shown by the record in this cause. It has waged bitter litigation against the debtor to defeat rehabilitation and deprive the debtor of the benefits of this remedial Act for over five years, before the Conciliation Commissioner, in the District Court, in the Court of Appeals, in the Supreme Court of the United States. When defeated there and the cause comes back to the District Court it is started over again, in the District Court, the Court of Appeals and in the Supreme Court.

It has paid no attention to this law but has trampled it down and defeated the purpose of Congress to rehabilitate this "distressed farmer debtor" on the basis of the present value of the land—\$6000.00 and discharge him of the other \$10,000.00 of the debt.

Besides this admonition of Congress the Supreme Court in this case on the former appeal held that the Federal courts may enjoin action by the mortgagee which would defeat the purpose of Congress to rehabilitate the farm mortgagor.

Wright case, 82 L. Ed. 1490 (1501).

(5) Is it not remarkable that with all of this illegal action to defeat rehabilitation no inferior Federal court has raised

its hand to enjoin this great corporation? It will not be denied but that it also paid no attention to this appeal but proceeded to sell the land under the judgment herein.

It is now resisting the debtor's petition for a writ and is also asking this Court to approve of its conduct in defeating the purposes of this Act of Congress.

(6) To return. On July 22, 1938, this creditor opened up all along the line again by filing a petition in the District Court in which it set up that in October, 1934 the debtor had filed his original petition and schedules in bankruptcy herein under Section 75 of the Bankruptcy Act as amended, that at said time it held a debt secured by a mortgage for \$9000.00 against the 200 acres of land (in Jay County, Indiana) described therein as follows to-wit:

"The Southeast Quarter (SE $\frac{1}{4}$) of Section 31, Township 24 North, Range 13 East; also the Southeast Quarter (SE $\frac{1}{4}$) of the Southwest Quarter (SW $\frac{1}{4}$) of Section 31, Township 24 North, Range 13 East, containing in all 200 acres, more or less." (R. Vol. 1; 22.)

(7) That it had filed its complaint for judgment on said note and to foreclose said mortgage in the Circuit Court of Jay County, Indiana against said debtor. That such proceedings were had. That afterwards it recovered a personal judgment of \$11,975.11 and a decree of foreclosure. That afterwards on July 20, 1935 said real estate was sold, and was bid in by said creditor for \$12,174.31, being the full amount of the debt at said sale and received a certificate of sale from said sheriff and that on July 20, 1936 it received a deed from said Sheriff for said property which was duly recorded in the Recorder's Office of Jay County, Indiana (R. 19)..

(8) That thereafter on October 11, 1935, said debtor filed his amended petition for relief under Section 75 subsec-

tion (s) of the Bankruptcy Act as amended August 28, 1935, and was duly adjudicated a bankrupt thereunder. That the Supreme Court of the United States has since held that the above described real estate came into the jurisdiction of the District Court and subject to the terms of said last-named amendment (subsection (s) of August 28, 1935) (R. 20).

(9) That at the time of filing said original petition in bankruptcy the same was referred to the Conciliation Commissioner of said Jay County, Indiana and a trustee was appointed to collect the $\frac{2}{5}$ of all crops harvested thereon to be delivered by said debtor to said trustee (R. 20).

(10) That said creditor then proceeded to state in substance the following reasons for ending the stay in said cause and ordering said land sold at public sale:

(a). That the debtor has not repaid any part of the principal of said debt.

(b) That said debtor has not paid any interest on said loan after October 1, 1930.

(c) That said debtor has paid no taxes on said land since 1932.

(d) That said debtor has sold and retained the entire proceeds of all crops harvested on said land since said loan was made.

(e) That said debtor has lived upon and enjoyed the full benefit of said land since said loan was made.

(f) That said debtor announced to said trustee and Conciliation Commissioner that he intended to hold all crops harvested on said land until the final determination of the validity of said section 75 (s), if upheld he would turn over $\frac{2}{5}$ of said crops and if not he would keep everything.

(g) That said debtor defaulted in the payment of principal, interest, insurance and taxes and failed to redeem from said foreclosure sale (R. 21).

(h) Said debtor has not been released or discharged from the personal judgment of \$11,975.11.

(i) That said debtor has been adjudicated a bankrupt and is insolvent, his liabilities being far in excess of his assets and he has no other income whereby he may expect to liquidate or reduce said liabilities.

(j) That said debtor's financial condition is beyond all reasonable hope of rehabilitation and this Court cannot afford him any relief whereby rehabilitation can be effected.

(k) That said debtor has made no good faith offer of extension and composition herein, has not bid or offered to pay any rental for the occupancy of said land.

(l) That said debtor's financial condition has not improved nor has he made any good faith effort to relieve the creditor beginning with the filing of his amended petition under Section 75 (s) of August 28, 1935 (R. 22).

(m) That said debtor has already enjoyed the moratorium of more than 7 years taking the full benefit of the proceeds of said real estate.

(n) That said debtor has failed to maintain and care for said land, the ditches thereon, the buildings and fences since the making of said loan and has permitted the same to fall into disrepair, thereby greatly depreciating the value of said security.

(o) That the debtor has disposed of all of the crops from said land and is retaining the proceeds therefrom.

(p) That said debtor has failed to compromise and satisfy said loan of October 1, 1925 on a basis and through

sources available to him and acceptable to your petitioner and is otherwise displaying lack of good faith (R. 22).

(11) That under Section 75 subsection (s) of August 28, 1935, the creditor is entitled to the following relief in substance:

(a) That the total amount of the debtor's indebtedness is in excess of \$14,000.00 (R. 23).

(b) That by reason of the failure of the debtor to pay said taxes the creditor had paid \$1,500.00 for taxes and insurance premiums to protect said real estate.

(c) That in the foreclosure of said mortgage the creditor has expended large sums of money for costs, stenographic fees, attorney's fees, and other expenses which has not been repaid.

(d) That the debtor is financially unable to repay said loan and the interest thereon and the amount advanced by your petitioner for taxes and insurance premiums and said costs and expenses.

(e) That the creditor has received no part of the benefit of said crops.

(f) That the money loaned by the petitioner is invested for the benefit of policy holders who intrusted their money to it.

(g) That under the laws of Ohio and Indiana and other States the creditor is required to assure a minimum interest income and is obliged to protect said investment (R. 23).

(h) That by reason of said defaults the creditor is being greatly injured and the value of said security has seriously depreciated.

(12) Wherefore the creditor prayed the Court in substance:

(1) That said proceedings under Section 75 (s) as amended August 28, 1935, be dismissed as to said real estate.

(2) That all injunctions and restraining orders preventing the creditor from proceedings in accordance with said foreclosure proceedings be vacated.

(3) That said lease be held null and void.

(4) That the creditor should be given immediate possession of said land.

(5) That said sheriff's deed to said creditor for said real estate be held valid.

(6) In the alternative, directing an immediate sale of said real estate to be fixed by the court (R. 24).

(13) It will be shown later that all of said alleged reasons for ending the stay and ordering the sale, except the one as to the payment of the rent, were merely pleading conclusions and the law instead of pleading facts, and that the Supreme Court in the Bartels and Kalb cases have recently held that said other alleged reasons set out above are not provided for in said subsection (s) and hence should be excluded in the consideration of the question as to whether said land should be ordered sold at public sale.

(14) That as to said statement as to the rent the same is wholly untrue. That said rents covered the periods of 1936, 1937 and 1938. That for the year 1936 said Trustee received for the wheat the sum of \$400.00. That the corn crop for the year 1936 in the sum of about \$350.00 was used to pay for the cost of reroofing and repairing the dwelling house. That it was necessary that said house should be re-

paired to save it. That for the season of 1937 there was no wheat raised on said land but that 2/5 of the corn crop is now in the crib on said farm and said Trustee can take it away at any time. That said creditor is entitled to about 740 bushels of the corn crop of 1938. That it has not been matured or gathered yet and that said Trustee can get it at the proper time (R. 40-41).

(15) That the debtor will show below that all of said other alleged reasons are not reasons at all and should be eliminated and excluded from any consideration herein, and it was error to base the judgment on them.

(16) That said demand to terminate said stay and order said real estate sold at public auction and allow said creditor to bid the full amount of its debt was met by an answer of the debtor to the effect: That he now request said Court to cause said real estate to be appraised or to set a date for hearing on said question and after hearing evidence as to its value to fix said value in accordance with the evidence and to enter an order allowing the debtor to redeem said land at said appraisalment and to order said land turned over to him free and clear of said mortgage debt (R. 42-43).

(17) That the finding hereinafter set out will show that said court wholly ignored said issue and failed to make any finding on said answer.

(18) That said debtor further charged that the "long train" of resistance to these remedial Acts of Congress—"evince a design" to overthrow said remedial Acts of Congress and deprive him of the benefits of the same and to defeat the purposes of Congress in enacting them which was to save farm homes and not confiscate them (R. 44).

(19) That said creditor knows that its debt is double the appraised value of said land, that at such a sale it intends

and will bid the amount of said debt and that means it would be utterly impossible for him to refinance said debt on said basis and redeem from such a sale. And that he cannot redeem his land except at the appraised value thereof (R. 48).

(20) That the debtor also filed an answer of former adjudication. That the questions presented in said creditor's petition as set out above were all litigated or might have been litigated in said first appeal and that said judgment of the Supreme Court that said 200 acres of land was in bankruptcy was final and conclusive and that said creditor could not relitigate the effect of said mortgage foreclosure and Sheriff's sale and other matters in its new action herein (R. 50-53).

(21) We will now proceed to eliminate the facts found by the court which are not reasons for forfeiting the land or which would authorize the court to terminate the stay and take the land from the debtor and order it sold.

(1) The first fact found by the court relates to the foreclosure proceedings in the Adams Circuit Court and the Sheriff's sale on July 20, 1935 and the Sheriff's deed dated July 26, 1936. This fact was before the Supreme Court in the other appeal and notwithstanding the Sheriff's deed the court held that this did not give any title to the creditor but that the title was still in the debtor and that the land was within the jurisdiction of the bankruptcy court. This is not all. In the recent case of *Kalb v. Feuerstein*, 84 L. Ed. 281, the Supreme Court held that such proceedings to foreclose mortgage and sell the real estate in the State courts were utterly void and that the same did not bind the debtor and the judgment could be set aside at any time by collateral attack and that it gave the creditor no title whatever and did not deprive the debtor of the benefits of this remedial act. Hence, the judgment of the Circuit Court of

Appeals could not rest upon the judgment of foreclosure and Sheriff's sale and deed, and that part of the finding should be excluded and not considered (R. 54).

(22) The court next found that the debtor had not made any offer of composition or extension as provided by the bankruptcy law. That alleged cause had been held unavailing in the case of *Bartels v. John Hancock, etc.*, 100 F. (2d) 813 (816), in which the court said:

"That Bartels in this case had no plan to present to his creditors except to offer to go to work personally on the farm with his grown son, and to apply presently to his secured debt what he could raise by selling some mercantile property and vacant lots, hoping to pay all in full finally, does not require the dismissal of his proceedings." *Bartels case*, 84 L. Ed. 154 (R. 54).

(23) Besides this there is no evidence in the record which supports the finding of the court. The creditor testified that he had offered them \$8000.00 (R. 131-132) at the first creditor's meeting. The record and the evidence also shows that the creditor's counsel, Roscoe D. Wheat, was present at the first creditor's meeting and that he did not raise any question at that time that the debtor had made no offer of composition (R. 1-2). That afterwards said counsel filed two petitions requesting the court to strike the real estate from the schedules and thereby recognized that it had waived the objection that the debtor has made no offer at the first creditor's meeting. If there was no such an offer it was the duty of said counsel to object to proceed any further at said first creditor's meeting. And the fact that he filed these two petitions and did not raise that question and the fact that it was litigated in the District Court and the Court of Appeals and in the Supreme Court and that the question was not raised in either of said courts and that it never was raised until the filing of the creditor's

petition herein on July 22, 1938, conclusively shows that the objection was entirely too late. Failure to raise the question at the first creditor's meeting was a waiver of the objection and precluded the creditor from presenting it afterwards. Hence the judgment could not be based on that (R. 3, 8, 10, 15).

(24) Besides this, if no such offer was made it would show lack of "good faith" and this court in the *Bartels* case held that this act contained no provision making that a cause of dismissal or ordering the land sold. *Bartels* case, 84 L. Ed. 154.

(25) The alleged finding that the debtor declined to turn over the rent unless the act was held valid; and he received some benefit from the act, if true, would not be cause for ordering the land sold and deprive him of the benefits of the act. Besides this the evidence shows he paid all of the rent except the corn produced in the season of 1936, which was used to repair the dwelling house. The act provides the rent shall be used to pay taxes and repairs of this house and the creditor did not offer a syllable of evidence to deny but that the roof and other parts of the house were out of repair and that they needed the repairs put on them. There would be no actual difference in paying the rent to the trustee and having him repair them, or the debtor doing the repairs and paying it out of the rent and paying the balance to the trustee. This contention was another effort to defeat this Act of Congress. The crop of 1936 was turned over to the trustee except what was used to pay for the repair of the house (R. 132-133).

The debtor told the trustee about making the repairs and he said nothing (R. 133).

The repairs were necessary to save the house. It leaked like a sieve. Leaked all over and plastering had fallen off (R. 133).

And it took the corn to pay for this (R. 133).

The trustee's share of the corn for 1937 is stored on the farm and I told the trustee it was there (R. 133).

Debtor gave him the wheat for 1938 and the corn is growing and not harvested (R. 134).

(26) The finding of the court that the principal, interest and taxes had not been paid and that the buildings were not kept in repair are not causes to end the stay and order the land sold and deprive him of the benefits of the act and it was error to base the judgment on this (R. 55). *Bartels* case, 84 L. Ed. 154.

(27) The court found the land was only worth \$6000.00 (R. 55).

(28) The total debt has increased to \$16,000.00. This gave the court no right to order the land sold and deprive the debtor of the benefits of this Bankruptcy Act (R. 55).

(29) The finding that the debtor could not refinance himself, and that there is no reasonable hope of rehabilitation, has been held in the *Bartels* case as no cause for depriving him of the benefits of this act.

Hence, it was error to base the judgment on that and order the land sold at public auction, and thereby deprived the debtor of the benefits of this act. *Bartels* case, 84 L. Ed. 154.

(30) A strange thing: The court found the debtor had refused to obey the orders of the court to make semi-annual payments (R. 56).

There is not a word nor a line in the record that any such an order was made. We now state none was ever made, and that the creditor will not deny this statement. Hence, the court erred in basing its order of sale on that.

(31) The order of sale is in the record, pp. 57-59.

That the court provided in said order that the creditor should have the right to bid the amount of its debt at said sale (R. 58).

Such an absurdity. The court knew when it made an order that the creditor could bid \$16,000.00 for the land that the court found was worth only \$6000.00 it was defeating the purposes of Congress in enacting this remedial act. A boy ten years old could see through that. That such an order made it utterly impossible for him to redeem or save his home, that he could not pay \$16,000.00 for \$6000.00 worth of land and that no loan company would ever finance him on such a basis as that. Congress never intended the court should make such an order as that. I do not care what may be said to uphold it no Court of Equity has the right to make such an order as would take this land from the debtor and turn it over to the creditor because he could not pay \$16,000.00 for land worth only \$6000.00.

That is in reality the only question in this case. The Court of Appeals dodged the question by refusing to make any finding on the debtor's cross-complaint. It had no right to refuse that because the debt was \$16,000.00 and the only asset the debtor had was the value of the land—\$6000.00. Say what you may, if Congress does not have the power to say that the debtor may redeem at \$6000.00 and discharge the balance of the debt, then its bankruptcy powers amount to nothing in hundreds of thousands of cases as this. It was the duty of the District and the Court of Appeals to have disregarded the second proviso of paragraph (3) and not used it to defeat the first two clauses—the debtor's right to save his home on the basis of its present value.

If that is not the law then hundreds of thousands of "distressed farmer-debtors" will be driven from their homes, as helpless as lambs and go down the lane for the last time and turn their eyes from the homes of their

ancestors. It cannot be that that is the law. No, it never should be and never will be.

The Court of Appeals had no right to base its decision on such an inhuman construction of the law as that.

It has been said in substance: "that in the structure of government the man must be placed above the dollar."

The record shows this debtor has done everything he could to comply with this law. That hence, he is entitled to its benefits. On the other hand it shows that this loan company has "Turned Heaven and Earth" to defeat the purposes of Congress to rehabilitate this "distressed farmer". Its conduct instead of being approved should be rebuked.

II.

Reasons Relied On for Granting the Writ of Certiorari.

(1) As we have shown above the rent for the first year, 1936, was paid and used in repairing the dwelling house which was necessary and added to the value of the security, and the Creditor offered no evidence to the contrary. Hence, admitted it. That the only crop for 1937 was corn and creditor's share of the rent was stored on the farm at the time of the trial in October, 1938. That the Trustee got his share of the wheat for 1938 and the corn crop was not ripe but was on the farm not gathered in October, 1938 the time of the trial, hence, this alleged cause should be eliminated and the court had no right to order a sale on account of the crops.

(2) Conceding for the sake of the argument that there was some part of the crops not delivered to the Trustee, it was there on the farm and even though part of it was used to save the dwelling house that would not be ground to forfeit the land and order the land sold, as against the debtor's request to have the land appraised and give him the right to redeem it at its present value.

(3) It is clear that this Act cannot be properly construed or understood without heeding the statement of this Court in the *Kalb* case, namely:

"Congress set up in the Act an exclusive and easily accessible statutory means for rehabilitating distressed farmers who, as victims of a general economic depression, were without means to engage in formal court litigation."

Other parts of the opinion in that case clearly show that the whole power and control of the debtor's property was vested in the District Court as a Court of Equity and Conscience to be administered according to equitable rules. In that view of it we contend that Congress never intended that the right to be rehabilitated on the basis of the value of the security and be discharged of the balance of the debt was ever to be defeated by any action of the creditor. That in a direct conflict at the same time between the alleged right to sell the land for disobedience of an order as to payments of rent and the right of the debtor to redeem his land and have the benefits of this Act, the alleged rights of the creditor would have to give way and yield and the right of the debtor to redeem should have the preference.

That in a direct conflict between the right to collect the rent and the debtor's right to redeem the first would be subordinate and secondary to the latter. That in a Court of Equity the latter could grant the right to redeem and provide that any deficiency in the rent should be paid by the debtor in addition to the present value of the land.

That the court should not have declared a forfeiture of the land when the small amount of rent could be disposed of in another way. Forfeitures are odious and not favored in law or equity and will not be enforced, except when there is no other remedy. Where there is another remedy the demand for a forfeiture should be refused by the court.

(4) Hence, the action of the Court of Appeals in enforcing this forfeiture and taking the land from the debtor and requiring that he pay \$16,000.00 for \$6000.00 worth of land was unconscionable. It violated the intent of this Act and defeated rehabilitation and is in direct conflict with the construction given it by this Court in the *Kalb* case, 84 L. Ed. 154.

And we will show it also conflicts with the decision in the *Gray* case in the Court of Appeals for the 6th Circuit wherein that court held the lien debt was of no more value than the value of the land, and is in conflict with the decision of the Supreme Court in this case in the former appeal and in conflict with all of the decisions of this Court on the question and in conflict with all of the standard authors on statutory construction.

(5) It therefore follows that the District Court and the Court of Appeals failed and neglected to construe this Act as intended by Congress and allowed the creditor to use it to take the debtor's land from him and thereby defeat the purposes of Congress. And that the sole question on this point is as to the proper construction of said Act of Congress and calls for the exercise of the supervisory power of this Court over the inferior Federal courts.

This opinion is found in 108 F. (2d) 361-3 (Pamphlet).

(6) The first finding of the court that the creditor foreclosed its mortgage in the State court as set out above. That the land was sold at sheriff's sale and bid in by the creditor and that a deed was issued to it, did not vest any title in the creditor, and did not deprive the debtor of relief in bankruptcy under this Act and was no reason which authorized the court to refuse the debtor's demand to redeem the land at its present value and end the stay and order it sold at public auction with the right to bid its whole debt of \$16,000.00. (It will not be denied but that it did

bid it in for said debt at the trustee's sale on March 9, 1939.)

This decision of the Court of Appeals in approving such a sale, is in direct conflict with the decision of this (the Supreme Court) in the *Kalb* case. In that case this Court held that the proceedings herein foreclosing said mortgage and the action of the sheriff in selling the land on said decree and the deed to the creditor all were null and void and of no effect in law.

Kalb v. Feuerstein, 84 L. Ed. 281.

(7) This brings the decision of the District Court based upon such a finding and Court of Appeals in approving it in conflict with the decision of this Court in said *Kalb* case.

(8) The finding of the court as set out above that the debtor had made no offer of composition (not acted in good faith) and basing the judgment on that is in direct conflict with the decision of the Court of Appeals in the 5th Circuit in the *Bartels* case in which that court held that no formal offer was required. The filing of the petition gave the court jurisdiction and it retained it even though no formal offer was made. The court was required to administer the estate regardless of the kind of an offer that was made so held in effect in the *Kalb* case in this Court.

Bartels v. John Hancock, 100 F. (2d) 813 (815-816);

John Hancock v. Bartels, 84 L. Ed. (U. S.) 154.

(9) As set out above that the debtor made an offer to get a loan. That the attorney of the creditor was present at the creditor's meeting and did not raise any such a question and later filed two petitions to dismiss the proceedings and thereby waived any irregularity in the offer, and that the creditor never raised the question in the District Court, in the Court of Appeals and in the prior appeal of this case to the Supreme Court, and never did raise it until

July 22, 1938, three years, seven months and 10 days after the first creditor's meeting on December 12, 1934. It is absurd to contend that it could wait all of that time to raise it. Like "Rip Van Winkle" it was too slow in waking up.

(10) The alleged finding of the court that the debtor said he would not turn over the rent until the Act was held valid amounts to nothing as it has been shown above he did turn over all of the rent except what it took to save the dwelling house. This Act provides that the rent shall first be applied to the payment of the taxes and "upkeep of the property".

By not contesting it, the creditor has admitted the repairs were absolutely necessary to put on the new roof to keep it from rotting down and to give shelter for the debtor and his family. This contention is so devoid of merit that it shows it is another evidence of the purpose of the creditor to defeat this law.

The Court of Appeals had no right to hold that it was any reason which authorized it to approve the action of the District Court in ordering this land sold at public auction. Hence, the decision is in conflict with the purpose of this Act and with the decisions of this Court in the *Bartels* case and in the former appeal of the case at bar. And with common sense and reason, which stand as a guide in the construction of all legislative acts.

(11) Besides this in a conflict between the demand of the debtor to redeem his home at its value (he never could rehabilitate on the basis of \$16,000.00 for \$6,000.00 worth of land) and the demand of the creditor to have it ordered sold, with the right to the creditor to bid \$16,000.00 at the sale, the court should have held the latter subordinate to the right to redeem and not allowed the creditor to defeat rehabilitation in that way. The court should have given

the debtor the preference and disregarded the second proviso of paragraph (3) of subsection (s) as void and of no effect and not allowed it to be used to defeat the right given in the first two clauses of said paragraph.

This construction of the Act is in conflict with the purpose of Congress in enacting it and it conflicts with the decision of the Court of Appeals of the 6th Circuit in the *Gray* case, with the decision of this Court in the former appeal of this the case at bar and brought it in conflict with other decisions of this Supreme Court and the statement of all of the standard authors on statutory construction, all of which hold that when an Act of Congress clearly gives a right, that right cannot be taken away by a later conflicting clause and that in construing such an Act the courts are authorized to enforce the right first given notwithstanding the conflicting clause. It is not to be presumed that Congress would grant a right in one breath and in the next stultify itself by taking it away.

(12) The finding of the Court of Appeals to the effect that the failure to pay the principal of the debt, interest, taxes, and that the improvement became out of repair, did not authorize it to end the stay, take the land from the debtor and order it sold at public auction and allow the creditor to bid \$16,000.00 for \$6,000.00 worth of land. This was perverting the Act and using it to lose his land instead of saving it. There is no provision in this Act which allows the court to forfeit the land for this last-named reason or for any of the other alleged reasons in said finding, as set out above and hence the decision of the Court of Appeals conflicts with the decision of this Court in the *Bartels* case.

John Hancock v. Bartels, 84 L. Ed. 154.

(13) To show that the Court of Appeals based its judgment on the finding that there was no hope that the debtor could rehabilitate himself, it quoted finding No. 23 (R.

56) in the opinion thus: "There is no evidence upon which may be based a reasonable hope or expectation of debtor's financial rehabilitation" (R. 156).

Did it ever occur to the court that in refusing to allow the debtor to redeem at the appraised value and requiring him to pay \$16,000.00 for \$6,000.00 worth of land that it was the one who was taking away all hope of financial rehabilitation? At that time and prior thereto the inferior Federal courts had been defeating this Act by following Footnote 6 in Justice Brandeis' opinion in (Va.) *Wright v. Vinton Branch, etc.*, 300 U. S. 440-462. Chief Justice Hughes in the *Bartels* case was confronted with that decision, disapproved the same and excluded it as *obiter dictum* and held that this Act did not contain any provision for a dismissal because of the absence of a "reasonable probability of the financial rehabilitation of the debtor."

Hence, the decision of the Court of Appeals is in direct conflict with decision of this Court on the same point in said *Bartels* case.

John Hancock v. Bartels, 84 L. Ed. 154.

(14) This decision of the Court of Appeals in refusing to order the real estate appraised and in refusing to allow the debtor to redeem it at its real value of \$6,000.00 is in conflict with the decision of the Supreme Court in the opinion in the former appeal of this cause in this:

(a) That on May 31, 1938, this Court in *Wright v. Union Central Life Insurance Company*, 304 U. S. 502-518 (82 L. Ed. 1490, 1499), held: "The right of Congress to legislate on the subject of bankruptcies is granted by the Constitution in general terms." "The congress should have power * * * to establish * * * uniform laws on the subject of bankruptcies throughout the United States (Art. 1, Sec. 8, Clause 4)." To this specific grant there must be added the powers of the general grant of clause 18: "To

make all laws which shall be necessary and proper for carrying into execution the foregoing powers." "The subject of bankruptcies is incapable of final definition."

(2) This Court further held in that case: "If the argument is that Congress has no power to alter property rights because the regulation of rights in property is a matter reserved to the States, it is futile."

"Bankruptcy proceedings constantly modify and affect the property rights established by the State law. A familiar instance is the invalidation of transfers working a preference, though valid under State law when made." "It (Court of Bankruptcy) may enjoin like action by a mortgagee which would defeat the purpose of section 75, subsection (s) to effect rehabilitation of the farmer mortgagor" (*Ibid.* 1501).

This Court further held: "The development of bankruptcy legislation has been towards relieving the honest debtor from oppressive indebtedness and permitting him to start afresh" (*Ibid.* 1499).

And "By the Act of March 3, 1933, Congress deliberately undertook the rehabilitation of the debtor as well as his discharge from indebtedness. This legislation for rehabilitation has been upheld as within the subject of bankruptcies" (*Ibid.* 1500).

This Court also held the present section 75 and its amended subsection (s) of August 28, 1935, do not violate the 6th amendment, the contract clause, or the 14th amendment of the Constitution (*Ibid.* 1499-1500).

Also, that the "reservation of essential attributes of sovereign power is also read into contracts as a postulate of the legal order" (*Ibid.* 1501).

Also that Congress had the power to extend the period of redemption as provided in section 75 (n) (*Ibid.* 1501).

Also that "Property rights do not gain any absolute in-

violability in the Bankruptcy Court because created by State law."

(b) The Supreme Court in *Norman v. Baltimore*, February 18, 1935, 294 U. S. 240-316 and 79 L. Ed. 885 (900) classed this power over the subject of bankruptcies with the other great powers of Congress "to coin money, regulate the value thereof," to declare war, pass non-intercourse Acts or an embargo, which may operate seriously upon existing contracts.

That in addition to the above the Circuit Court of Appeals for the 6th Circuit in *Gray v. Union Joint Stock Land Bank*, 105 F. (2d) 275 (277-278), in construing this remedial Act on June 28, 1939 held:

"Section 75 was intended to enable insolvent farm-debtors or those unable to meet their obligations as they matured to retain control of their property on turning over to their creditors its fair and reasonable market value in either money or its equivalent."

"The lien debts are worth no more than the value of the property and any deficiency would be a dischargeable debt. It therefore follows that the lien creditor loses nothing so long as his debt is made secure to the extent of the value of the property" (p. 278).

While on the other hand the United States Circuit Court of Appeals for the Seventh Circuit in the case at Bar in 108 F. (2d) 559 has not followed but departed from this sound law in passing on the same question as discussed above and did not follow said decision in said *Wright* case or said decision of the Circuit Court of Appeals in the 6th Circuit and the other authorities cited but has departed therefrom and held in substance.

That the debtor's request to redeem the land was denied at its fixed value of less than \$6,000.00. That the creditor's demand that the land be sold at public auction with the

right to bid its debt at said sale and thereby make rehabilitation impossible defeated the purpose of Congress in passing said remedial Act.

That the debtor should not be required to pay \$16,000.00 for less than \$6,000.00 worth of land before he could redeem. If enforced he will lose his home and be deprived of the benefits of this Act.

(15) This decision of the Court of Appeals conflicts with other decisions of this Court and all of the authors, of the proper rule of construction to be applied to this Act.

“The intent of the lawgiver is the law.”

“The mere literal construction of a section in a statute ought not to prevail if it is opposed to the intention of the legislature, apparent by the statute and if the words are sufficiently flexible to admit of some other construction it is to be adopted to effectuate that intention. The intent prevails over the letter, and the letter will if possible, be so read to conform to the spirit of the Act.”

Lewis' Sutherland Statutory Construction, Vol. 2 (2d), sec. 376 (322), p. 721.

The Court of Appeals erred in giving the Act a literal construction instead of a liberal one.

(16) In doing that the District Court and the Court of Appeals should have held the alleged right to demand a public sale, and bid the amount of its debt, subordinate to the right to redeem and that as a Court of Equity it would now allow the creditor to defeat rehabilitation and the debtor's right to save his home, by demanding that he pay \$16,000.00 for land that was only worth \$6,000.00.

The other cases and authors on construction holding that where a right has been given in a statute that it cannot be taken away by a subsequent conflicting clause and that in construing it the Courts are required to disregard the con-

ficting clause so as to carry out the intent of the Legislature.

If that is not the law then hundreds of thousands of "distressed farmer-debtors" will be driven from their homes, as helpless as lambs, and go down the lane for the last time and turn their eyes from the homes of their ancestors. It cannot be that that is the law. No, it never should be and never will be.

Wherefore your petitioner prays that a Writ of Certiorari be issued under the seal of this Court in this cause, directed to the Judges of the United States Circuit Court of Appeals for the Seventh Circuit, commanding it to certify and transmit the original record in said Court to this Court, to the end that said decision may be reviewed and determined by this Court as provided by the laws of the United States. And that said decision and judgment of said Court of Appeals in this cause be in all things reversed and with directions to allow this land to be administered in bankruptcy as Congress intended, and for such other relief as to this Court may seem proper in the premises.

That the petitioner be allowed to file the original record and typewritten transcript of the proceedings in said Court and a typewritten copy of his petition for the Writ and brief in support thereof and that said petition and affidavit for leave to appeal as a poor person be docketed and heard in this Court on said Record and transcript, and also be granted.

Dated this — day of April, 1940.

Respectfully submitted,

SAMUEL E. COOK,
Huntington, Indiana;

WM. LEMKE,
Fargo, N. Dakota,
Counsel for Petitioner.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 51

JAMES M. WRIGHT,

vs.

Petitioner,

**THE UNION CENTRAL LIFE INSURANCE COMPANY,
WILLIAM D. REMMELL, TRUSTEE**

**PETITIONER'S BRIEF IN SUPPORT OF PETITION
FOR WRIT OF CERTIORARI.**

*To the Honorable Charles Evans Hughes, Chief Justice,
and the Associate Justices of the Supreme Court of the
United States:*

I

Opinion of the Court.

The opinion of the Court of Appeals is in the Record, pages 153-157 inclusive. It is reported in 108 F. (2d) 361-363 (Pamphlet).

In substance the Court of Appeals refused to allow the debtor to redeem his home at its present undisputed value of \$6000.00, and to discharge him of the debt above said sum.

That it forfeited the land without any cause provided for in the Act of August 28, 1935 and ordered it sold at public auction and allowed the creditor to bid the whole amount of its debt of \$16,000.00 at said sale. That it is as plain as the "Noon day Sun" that such an absurd order requiring the debtor to pay \$16,000.00 for \$6000.00 worth of land before he could redeem, made it impossible for him to redeem or be rehabilitated and totally deprived him of the benefits of said Act and made the law a sham and a farce and no law at all in all cases where the debt exceeded the value of the land in any substantial amount.

The mere statement of such a proposition should deceive no one. It is such a shock to the conscience as to condemn and refute itself. This Court has condemned such a construction of this Act in the opinion in the previous appeal of this cause. It has in effect condemned it in the recent *Bartels* case.

Congress in enacting subsection (s) August 28, 1935 meant to give relief to farmers in the condition the debtor is in here. In other words it would be unreasonable to presume that Congress intended that this Act should apply only to cases where the debt was less than the value of the land and did not intend to apply it where the debt is \$16,000.00 and the land only worth \$6000.00.

This Court in the recent *Kalb* case, January 2, 1940, quoted the purpose of the Act from the language of the report of the Judiciary Committee of the House as follows:

"And that the benefits of the Act should extend to the farmer, prior to confirmation of sale, during the period of redemption, and during a moratorium; and that no proceedings after the filing of the petition should be instituted, or if instituted prior to the filing of the petition, should not be maintained, in any Court or otherwise." * * * "Congress set up in the Act an exclusive and easily accessible statutory means

for rehabilitating distressed farmers who, as victims of a general economic depression, were without means to engage in formal Court litigation." "To this end, a referee or Conciliation Commissioner was provided for every county in which fifteen prospective farmer-debtors requested an appointment; and express provision was made that these Commissioners should 'upon request assist any farmer in preparing and filing a petition under this section and in all matters subsequent thereto arising under this section and farmers shall not be required to be represented by an attorney in any proceeding under this section.' In harmony with the general plan of giving the farmer an opportunity for rehabilitation, he was relieved—after filing a petition for composition and extension—of the necessity of litigation elsewhere and its consequent expense."

Kalb case.

Under this language, it is clear that when the creditor filed its petition herein the District Court should have summarily given the debtor his right to redeem the land at the appraisement and dismissed the creditor's petition and restrained it from taking any further action to defeat the purpose of Congress to rehabilitate him.

Kalb case, 84 L. Ed. 281;

Previous *Wright case*, 82 L. Ed. 1490-1501.

A few decisions like that would have forced these Loan Companies to have some respect for the laws of Congress and the decisions of this Court and would have saved hundreds of thousands of farms taken from the owners without right.

The creditor here has paid no attention to what Congress intended by this Act. The record here will show it has harassed him with intense litigation since October 29, 1934, in the District Court, the Court of Appeals and in this Court on the prior appeal of this case. Then when the

case came back to the District Court it commenced over again with the petition filed herein in July, 1938. It has fought in the District Court, in the Court of Appeals and is now resisting his petition in this Court for a writ of certiorari.

II.

Jurisdiction of This Court.

(1) The final order denying the petition for rehearing was entered, December 21, 1939, and the time ran from that date. The record in this Court shows that the petition for the writ was filed in time.

(2) Section 240 (a) of the Act of May 13, 1925, defining the jurisdiction of the Supreme Court provides that in any case in a Circuit Court of Appeals it shall be competent for the Supreme Court of the United States upon the petition of any party thereto to require by certiorari that the cause be certified to the Supreme Court. Subsection 8 (a) of said section 240 provides that application for said writ may be filed within three months after the entry of judgment and that for good cause said time may be extended not exceeding 60 days by a Justice of said court.

(3) Notwithstanding these statutory provisions a review on writ of certiorari is still a matter of sound judicial discretion and will be granted where there are special and important reasons therefor.

Paragraph 5, Rule 38, Supreme Court, pp. 31-32.

(4) The appellant contends that the errors of the Court of Appeals in this cause set out above namely:

(a) That said decisions as set out above are in conflict with said decision in the *Gray* case in the Sixth Circuit Court of Appeals.

(b) That said decisions are in conflict with the decision of the Supreme Court in the *Wright* case.

(c) That they have decided important questions of general Federal law in a way probably untenable and in conflict with said Act of Congress and the weight of authority.

(d) That they have decided an important question of Federal law which has not been directly settled by this Court but which should be settled by it.

(e) That it has decided a Federal question or statute in a way in conflict with the applicable decisions of this Court.

(f) That it has so far departed from the accepted and usual course of Federal judicial proceedings in construing a Federal statute as to call for an exercise of this Court's power of supervision over the decisions of said inferior Federal courts.

(g) That these questions in the case at bar are of general public importance and this erroneous construction and application of this Act of Congress, should be settled by this Court.

(h) That said decisions of said Courts of Appeals did not follow said remedial Act of Congress and the applicable decision of this Court in said *Wright* case, which reasons brings the case at bar within the provisions of said Rule 38 paragraph (5) (b) and (c).

Besides this, the appellant in his reasons has set out the great public importance of the questions erroneously decided by said Court of Appeals in this cause and the Supreme Court wisely recognized that as a reason for granting certiorari in *John Hancock v. Bartels*, December 4, 1939.

That there is no other way to settle and eliminate this conflict and confusion in the decisions of said inferior courts,

and this important question of right and justice and uphold the purposes of Congress in enacting this humane Act to save the farm homes of our great country, except for this Court to exercise its wise power of supervision to bring about uniformity in the decisions on the proper construction and meaning of this Act of Congress—the supreme law of the land.

III.

Statement of the Case.

This has been done in the preceding petition herein, page 5 to page 31 inclusive, and it is not necessary to repeat it again.

IV.

Specification of Errors.

Petitioner's assignment of errors in the court below is found in Record 60 to 74 inclusive and are in substance as follows:

1-a. The court erred in overruling the appellant's motion to dismiss the creditor's petition filed July 22, 1938, on which the present proceedings are based because it states no grounds for dismissing the proceedings in bankruptcy herein.

1-c. That it shows on its face that it is wholly without any equity, merit or right.

1-d. That it shows to allow it would deprive the debtor of the right to save his home under Act of August 28, 1935.

1-f. That said petition fails to show that the debtor has violated any Federal Bankruptcy Act.

1-h. That under said subsection (s) said rents are under the control of the District Court and it is not shown that

the creditor took any steps to correct the matters complained of in its petition (R. 61-62).

1-i. That said matters complained of in said petition are not enumerated as causes in said Act for the dismissal of said proceedings.

1-j. That said creditor does not show in said petition that said debtor cannot refinance himself on the basis of the appraised value of the (real) estate with the stay of three years and March 4, 1940.

1-k. That said petition shows that said creditor by its litigation against the debtor has prevented him from refinancing himself on the basis of the present value of said land.

1-l. That said petition does not state facts which would authorize the court to deprive the debtor of the benefits of said Bankruptcy Act (R. 62-63).

3. That (special) finding No. 3 to the effect that the debtor did not make any offer of composition (at the first creditor's meeting) is not sustained by sufficient evidence.

4. That said finding No. 3 is contrary to law as the evidence showed that Roscoe D. Wheat, Counsel for said creditor was present at said meeting and heard all of the proceedings and did not object or raise any question about the lack of an offer (R. 63).

4-e. f. That after said meeting on January 2, 1936 said creditor appeared in said court in said cause and filed a motion to dismiss said proceedings and release said land and stated as ground that said subsection (s) of August 28, 1935, was unconstitutional. That it did not make any objection that said court did not have jurisdiction of said cause (R. 64).

4-h. That said Conciliation Commissioner struck out said land and said ruling was reviewed in said District Court and said creditor did not raise the question that no offer of composition had been made at said meeting (R. 64).

4-l. That said cause was appealed to the Circuit Court of Appeals and said creditor appeared and filed briefs and made oral argument and did not raise any question that no offer was made at said meeting.

4-n. That said cause was appealed to the Federal Supreme Court and no such question was raised therein.

That therefore said District Court should have found that said creditor had repeatedly waived any irregularity in said offer at said meeting (R. 66)..

5. That the finding that the debtor did not turn over the rent is not sustained by sufficient evidence.

6. That the evidence shows the debtor properly used part of the rent to make necessary repairs on the dwelling house.

7. That the record shows the creditor repudiated this remedial Act of Congress in the State and Federal courts on the ground it was void and that it has not accepted any of said rent. It should not be allowed to "blow hot and cold". It should not be allowed to use it (this law) to deprive him (debtor) of his home. That in this Court of Equity a litigant must come into it showing good conduct before it can invoke its aid against others.

8. This Act (Subsection (s)) does not provide that the failure to pay principal, interest (on debt) taxes does not authorize the court to end the stay and deprive the debtor of the right to refinance and redeem his land at its appraised value, as to the taxes they are paid out of the rent (R. 67).

9. The fact that the buildings were allowed to become out of repair is no ground to end the stay. The remedy was to have them repaired out of the rents.

12. The fact that the income from the land was from \$2,000.00 to \$200.00 was no cause to end the stay and deprive the debtor of his right to save his home.

13. The fact that the debtor could not pay more than \$6,000.00 for the land did not deprive him of the benefits of the Act and it was gross error to require him to pay \$15,000.00 (\$16,000.00) to redeem \$6,000.00 worth of land (R. 67).

15. The finding that the debtor had not delivered the crops to the trustee is not sustained by sufficient evidence.

16. The finding that the debtor's income is insufficient to liquidate the debt, interest and taxes was no reason for ending the stay.

17. The court should have found that the debtor could redeem the land at \$6,000.00.

18. The court should have found that this (the Supreme) Court had found that this land was in bankruptcy, and that hence he was entitled to the benefits of this Act (R. 68).

21. The court erred in this:

Instead of allowing the debtor to redeem at its present value, it ordered it sold at public auction and gave the creditor the right to bid its debt of over \$15,000.00 (\$16,000.00) and thereby made it impossible for him to redeem (no one could pay \$16,000.00 for \$6,000.00 worth of land) (R. 69).

22. That the court erred in this:

In ordering that the debtor could not redeem unless he paid the whole debt.

24. That the court should have found the creditor gained no title to the land by the foreclosure proceedings and sheriff's sale and that said facts deprived him of his rights under said Acts of Congress (R. 70).

29. That the finding of the court is contrary to law in this: }

The debtor demanded the right to redeem by paying the value of the land, into court within the period of redemption and that the court order it turned over to him "free and clear" of the mortgage debt and the court erred in not granting this (R. 71).

30. That the Supreme Court in the former appeal of this cause held the land was in bankruptcy. That said judgment is final and binds the creditor and it had no right to afterwards file the petition herein including the same facts and that the facts herein could have been included in said former proceedings in the District Court and hence are considered litigated and settled in said former appeal, and cannot relitigate said questions and the District Court should have dismissed said petition and not allowed said creditor to harass the debtor with further litigation (R. 71-73).

34. That the court erred in finding that the debtor was beyond all hope of rehabilitation.

35. That there are other errors so manifest that this Court should notice them in considering this appeal (R. 74).

V.

THE ARGUMENT.

Summary showing points and authorities relied upon:

Point 1. The foreclosure of the mortgage and sale by the sheriff and deed to the creditor was utterly void and did not deprive the debtor of the benefits of the Bankruptcy Act.

Kalb v. Feuerstein, 84 L. Ed. (U. S.) 281.

Point 2. The finding that the debtor has made no offer went to his good faith and this Court has held that that did not authorize the court to terminate the proceedings. No formal offer was required. The filing of the petition gave the court jurisdiction over the property and even though no formal offer was made the court did not lose its control over it but had the power to proceed to administer the estate and did not deprive the debtor of the benefits of the Act.

Bartels v. John Hancock, 100 F. (2d) 813 (815-816);
John Hancock v. Bartels, 84 L. Ed. (U. S.) 154.

Point 3. The fact that the counsel of the creditor was present at the meeting and made no objection at that time was a waiver of the form in which it was made. To be silent on that question and never raise it for 3 years and 7 months after the creditor's meeting was too late. Self-Evident.

Point 4. The alleged statement that the debtor said he would not pay the rent until the court decided whether the Act was valid was denied amounts to nothing because it was shown and not seriously disputed that he had paid all of the crop rent, except the part used to make necessary repairs of the house. It was not denied by the creditor but that the repairs were necessary and hence increased the value of the land.

Point 5. Besides this in a conflict by the creditor demanding a sale for non-payment of rent and the right of the debtor to redeem the land, it was the duty of the court to give the latter a preference over the former, as the court could adjust the rent in some other way than forfeiting the land. Forfeitures are odious and will not be resorted to where there is a more reasonable way to avoid them.

Point 6. The finding that the debtor had not paid the principal, interest, taxes and that the improvements became

out of repair did not forfeit the land. There is no provision of that kind in the Act and the courts have no power to add causes to the law. This Court so held in effect.

John Hancock v. Bartels, 84 L. Ed. 154.

Point 7. The finding that there was no hope that the debtor could rehabilitate himself was rejected by this Court in the *Bartels* case and the decision in *Wright v. Vinton Branch, etc.*, so holding was overruled as *obiter dictum*.

John Hancock v. Bartels, 84 L. Ed. 154.

Point 8. The Act of Congress upon which this right is based is as follows:

“At the end of three years—the debtor may pay into Court the amount of the appraisal.” (And thereby redeem the land.)

“That * * * upon the request of the Debtor, the Court shall cause a re-appraisal of the Debtor's property, or in its discretion set a date—and after such hearing fix the value of the property * * *, and the Debtor shall then pay the value so arrived at into Court * * * and thereupon the Court shall by an order, turn over full possession and title of said property, free and clear of encumbrances (mortgage debt) to the Debtor.”

11 U. S. C. A. 203 (3).

Point 9. The following support this view: That the second proviso of Section 75 (s) (3) is void and should be disregarded.

23 American and English Enc. Law, pp. 317-318. Citing many cases.

23 American and English Enc. Law, p. 362. Citing many cases.

23 American and English Enc. Law, p. 412. Citing many cases.

23 American and English Enc. Law, p. 419. Citing many cases.

50 *Corpus Juris* pp. 999-1000. Citing many cases.

23 American and English Enc. Law, p. 420. Citing many cases.

Wilson v. Mason, Cranch. 45, 2 L. Ed. 29;

Huidekoper v. Douglass, 3 Cranch. 1, 2 L. Ed. 347;

Peck v. Jennes, 12 L. Ed. 841;

Rice v. Minnesota & N. W. R. Co., 1 Black. 358, 17 L. Ed. 147;

Bernier v. Bernier, 147 U. S. 242, 13 Sup. Ct. Rep. 244, 37 L. Ed. 152;

Perrine v. Chesapeake & D. Canal Co., 9 How. 172, 13 L. Ed. 92;

Lewis' Sutherland Statutory Construction, Vol. 2 (2d) 376 (322) p. 721:

"The more literal construction of a section in a statute ought not to prevail if it is opposed to the intention of the legislature, apparent by the statute and if the words are sufficiently flexible to admit of some other construction it is to be adopted to effectuate that intention. The intent prevails over the letter, and the letter will if possible, be so read to conform to the spirit of the Act."

Cites *Lime City v. Black*, 136 Ind. 544.

Citing: *Pierce v. Van Dusen*, 78 Fed. 693. Same p. 726.

Lewis' Sutherland Statutory Construction, Vol. 2, Sec. 488 (322) p. 910.

Blackstone (87).

Blackstone again (91).

59 *Corpus Juris* 948-952. Many cases cited.

23 American and English Enc. Law, p. 420. Citing many cases.

Point 10: The giving of this right excludes everything which would stand in the way of that right.

Point 11. This is a remedial act and must be construed in that light to carry out the intent of Congress in enacting a law to save farm homes.

Point 12. The second proviso in said paragraph (3) purporting to give the creditor the arbitrary right to demand a termination of the stay and a sale of the land with the right to bid the amount of its debt, taken literally, would defeat the whole purpose of Congress in passing this act. It is a "joker". It would defeat rehabilitation and make the first clause and first proviso a sham and a farce and make them no law at all. Hence, it was the duty of the District and the Court of Appeals to disregard it, and hold it subordinate to the right to redeem and that the right to redeem had the preference and could not be defeated by the second proviso. When a clause in an act is so repugnant and absurd as to defeat the whole purpose of the Act it is void and should be disregarded, and not considered except as a last resort only when all other remedies failed to rehabilitate the debtor at the termination of the period of redemption. The relief of farmer-debtors was the paramount object of Congress in passing this Act and this proviso must yield and give way to give the right for farmer-debtors to save their homes on the basis of their present value and did not intend in the next the absurdity of taking that right away from them and allowing the creditor to arbitrarily take their homes without giving any reason and turn them and their families out on the public highways.

Point 13. In support of appellant's contention we cite the following rule of construction as laid down by a standard author and of this and other Courts:

(a) "As the intention of the legislature embodied in a statute, is the law, the fundamental rule of construction, to which all others, are subordinate, is that

the Court shall, by all aids available, ascertain and give effect to the intention of the maker."

59 *Corpus Juris* 948-952. Many cases cited.

Point 14. Congress in the exercise of its powers over the subject of bankruptcies certainly had the power to bring the mortgage debt down to the real value of the security. In the case at bar to bring the debt of \$16,000.00 down to \$6,000.00, the real value of the security. This has been the great contest and struggle in the courts since section 75 of the Bankruptcy Act of March 3, 1933 was amended by adding subsection (s) of August 28, 1935. If it has not that power then there is no remedy for the insolvent debtor in a case like the one at bar but to close his eyes and allow the debtor and the inferior Federal courts to confiscate his home and turn him and his family from the place which has become as dear to them as "light and life".

Point 15. That this Court meant to hold that Congress had the power to bring the debt down to save the debtor's home and that it exercised that power in adding subsection (s) to section 75 on August 28, 1935 and extended it to March 4, 1940 (11 U. S. C. A. 203 (s)) is conclusively shown in the statements of this Court in *Wright v. Union Central Life Insurance Company*, 304 U. S. 502-518 (82 L. Ed. 1490-1502) as follows:

(a) "The development of bankruptcy legislation has been towards relieving the honest debtor from oppressive indebtedness and permitting him to start afresh." *Ibid* 1499.

(b) "By the Act of March 3, 1933 Congress deliberately undertook the rehabilitation of the debtor as well as his discharge from indebtedness. This legislation for rehabilitation has been upheld as within the subject of bankruptcies." *Ibid*. 1500.

(c) "If the argument is that Congress has no power to alter property rights because the regulation of rights in property is a matter reserved to the States, it is futile."

"Bankruptcy proceedings constantly modify and affect the property rights established by the State law. A familiar instance is the invalidation of transfers working a preference, though valid under State law when made." "It (Court of Bankruptcy) may enjoin like action by a mortgagee which would defeat the purposes of (section 75) subsection (s) to effect rehabilitation of the farmer mortgagor." *Ibid.* 1501.

(d) "Property rights do not gain any absolute inviolability in the bankruptcy court because created by State law." *Ibid.* 1502.

Point 16. It is plain that subsection (s) added to section 75 by the Act of August 28, 1935, is an Act introducing a new feature in bankruptcy. Previous Acts were for the purpose of selling the debtor's land and dividing the proceeds among the creditors according to their priority and discharge the balance of his debts. This new Act is intended to not sell the distressed and wrecked farmer's land, but to allow him to keep it and reorganize himself on the basis of the appraised value thereof and discharge him of the debt above that value.

Congress not only intended to save his home but to give him and his family new hope and a new vision of life. Hence, the Supreme Court in *Wright v. Mountain Trust*, 300 U. S. 440-470 (81 L. Ed. 736) rightly stated:

"The farmer's proceedings in bankruptcy for rehabilitation resembles that of a corporation for reorganization."

Citing 11 U. S. C. A. Sec. 207 (c).

The court meant to compare it to the proceedings under Sec. 77 which provides for the reorganization of railroads and 77 B. providing for the reorganization of other corporations.

These Acts provide in substance for a readjustment of debts by reducing them to somewhat correspond to the value of their property and other assets and by adopting a plan of reorganization by which the corporation retains its property and continues to operate it.

Many railroads and factories and other industries have been reorganized under these Acts and this legislation has been upheld by the courts.

Point 17. If such debts can be reduced and the institution retain its property why cannot the farmer's mortgage debt be brought down to the value of the land and continue to operate it by allowing him to take the latter at its appraised value and have the balance of his debt discharged. Farming is the basic industry and is greater than any other. This Court has thrown a great light on this purpose when it wisely said in the recent *Kalb* case:

"Congress set up in the Act an exclusive and easily accessible statutory means for rehabilitating distressed farmers who, as victims of a general economic depression, were without means to engage in formal court litigation."

Kalb case, 84 L. Ed. 154.

Point 18. That is what this Court meant by the language quoted from the *Wright* case above. It said Congress deliberately undertook to do two things:

First: To rehabilitate the farmer—put him on his feet. Allow him to start over again. In the case at bar the farmer only had \$6000.00 of property and \$16,000.00 of mortgage debt. He could not be rehabilitated by requiring him to pay

\$16,000.00 for \$6000.00 worth of land. On that absurd theory he was gone and could not "start afresh." He could not pay \$16,000.00 of debt with \$6000.00 worth of assets.

Hence, he could not be rehabilitated except in one way:

To allow him to take the land at its appraised value of \$6000.00 and discharge the balance. The court did not use the word rehabilitate as a meaningless term or in an idle way. It intended to solemnly say that if the debt is double the value of the land the debtor should not be turned away and denied relief but that the court must construe this Act to bring the debt down to the value of the land, so that he could be rehabilitated and so that the purpose of Congress could be carried out.

What did the court mean when it said that Congress intended the debtor should be discharged of his indebtedness and the previous language in substance that the object of this legislation was to relieve the debtor of his oppressive indebtedness and permit him to "start afresh". In addition to the mental agony, the sleepless nights he had the weight of this debt hanging like a "millstone" about his neck. As sure as the "night, the day" Congress intended to lift this burden and give him new life. Hence, it is plain he could not be rehabilitated except on the basis of the value of the security and could not "start afresh" except by the court relieving him of the balance of this "oppressive indebtedness."

Point 19. The wisdom, desirability and necessity for such an Act to bring this great power down to meet new conditions and this new "Crisis" were considerations for Congress and not the courts.

Supreme Court—*Kalb* case, January 2, 1940.

Point 20. The Judiciary Committee of the Senate made a report on S. 1935 to amend the old subsection, Section 75 (s) and in it stated:

"The intent of Congress was and is that the 3 years (extended to March 4, 1940) (part in parenthesis our own) not to pay all of his debts but to pay the value of the property." "Very few bankrupts are able to pay all their debts."

Senate Report, Aug. 1, 1939, page 2.

Point 21. That Congress is the Judge of the means it will employ to carry out its Constitutional powers, has become so well settled by the decisions of this great Court that no citations are necessary "He who runs may read."

Point 22. It is plain from the decisions of this Court and standard authors as set out above that in the construction of a statute the cardinal rule is to so construe it as to carry out the intent of the Legislature and that a clause therein which results in an absurdity or taken literally would defeat that intent is void and should be disregarded and not allowed to defeat the plain purpose of the Act.

"The intent of the lawgiver is the law." To determine that intent is for this Court. It is a great responsibility.

Point 23. Everyone knew and understood that the purpose of Congress in adding subsection (s) to section 75 was to save hundreds of thousands of farm homes of those engaged in the basic industry of the country.

This Court rightly described the "distressed farmers who as victims of a general economic depression were without means to engage in formal Court litigation" (*Kalb* case).

That it never did intend by this Act to allow anything to stand in the way of carrying out that plan and the Circuit Court of Appeals should have construed this Act in that light in this case.

It intended to cure the evil or mischief of the old law of allowing the creditors to demand a sale of the land and then the farce of allowing it to bid the whole of his half

dead debt at the sale and thereby make it utterly impossible for the debtor to redeem and the result was that the debtor was driven from his home and from his own "vine and fig tree" out on the public highways without hope.

The sense of justice and conscience is shocked at such an inhuman construction of this remedial Act in a Court of Equity.

Perhaps his ancestors had lived on this home and plantation for generations and it had become as dear as "light and life" to them. They were ready and could finance it at its present value, but no, the creditor demanded the whole debt. It demanded the last dollar of the debt and thereby confiscated this ancestral plantation, described as no other hath—"A charm from the skies seems to hallow us there, which seek through the world is not met with elsewhere."

Point 24. This act was passed to save homes. The stability and perpetuity of our country depends on American homes. The men and women of America will decay and lose their spirit of independence and ideals and our institutions will dwindle away and die if American homes are not restored and protected. This is not radicalism. It is conservatism.

Point 25. When the Court of Appeals for the Sixth Circuit came to interpret and construe the meaning of this remedial Act it wisely said:

"Section 75 was intended to enable insolvent farm-debtors or those unable to meet their obligations as they matured to retain control of their property on turning over to their creditors its fair and reasonable market value in either money or its equivalent." * * *

"The lien debts are worth no more than the value of the property and any deficiency would be a dischargeable debt. It therefore follows that the lien creditor

loses nothing so long as his debt is made secure to the extent of the value of the property.”

Gray v. Union Joint Stock Land Bank, 105 F. (2d) p. 278.

Point 26. This language excludes the idea that the creditor could stand in the way of the great relief intended by this Act by demanding an end of the stay and a public sale and by bidding its whole debt and thereby defeat and make rehabilitation impossible and make this Act a sham and a farce and no law at all.

Point 27. The debtor was not to blame for this fall in the value of the security and in a Court of Bankruptcy why should he bear all of the loss?

The paramount question is shall this Act be construed to restore and save American farm homes. The Court of Appeals seemed to not grasp the great intent of Congress and allowed the District Court to use this Act to take the debtor's home from him.

Point 28. It was utterly impossible for Congress to exercise its great power to reorganize, rehabilitate and help the distressed farmer out of the rut without reducing the creditor's debt and bringing it down to the present value of the security. But in doing that the creditor lost nothing in fact.

The Supreme Court in the first *Wright* case held as to this Act:

“The legislation is designed to aid victims of the general economic depressions.”

300 U. S. 440-470;

81 L. Ed. 736 (746);

Kalb case, January 2, 1940.

Point 29. We come now to the Act of March 4, 1938. The plain language of that Act applied it to and extended “all

existing and pending cases" in any Federal court—until March 4, 1940.

Paragraph (5) of subsection (s) of the previous Act had extended all existing cases for three years. That time was about to expire and section 2 of the Act of March 4, 1938, amended said former paragraph (5) and brought it forward and applied it to all cases pending on March 4, 1938, and by applying it thereby it extended this cause to March 4, 1940. The effect of this was to extend the period of redemption or moratorium until March 4, 1940. To urge that it did not extend all pending cases is absurd. No reason has been given by its opponents or the Court of Appeals in this case why Congress should provide for filing new cases, extend all cases that had been dismissed where the Federal courts had erroneously dismissed them on the ground the Act was unconstitutional and then neglect to extend other pending cases like the one at bar.

This Court held in both of the *Wright* cases that Congress had the power to extend the period of redemption or moratorium and it certainly did so in this Act. To contend otherwise is to disregard the language of the Act and defeat the purpose of this remedial Act. This Act of March 4, 1938, was designed to save "distressed farmers" homes and the court should have treated it in that light and should not have given it a strained construction which would defeat the purposes of Congress to save farm homes.

Argument in Support of Said Points.

The statements in the summary, in the reasons for granting the writ and other preceding parts of this brief and the statement of the points and authorities are an argument and any attempt to argue them at length would be largely a repetition.

It is conceded by all that the Constitution cannot be carried out except by legislation.

Legislation makes it a living instrument. Many may cry, Constitution, Constitution, and yet at every opportunity bitterly oppose every law enacted by Congress to carry it out. To oppose the laws enacted by Congress within its power is to oppose the Constitution. Each is the Supreme Law of the Land.

"Grant, it is the duty of the Federal Courts to defend the Constitution when the National Legislature transcends its powers, and hold such laws void, yet on the other hand it is their solemn duty to give to the Constitution and the laws of Congress enacted under it, a liberal construction and give to the people who made it and who have preserved it, all of the rights expressly or impliedly granted to them therein. "For the letter killeth but the spirit giveth life." The true rule of interpretation of the Constitution is well expressed by this Court in *Home, etc., v. Blaisdell*, 78 L. Ed. 413 (431). You need look no further.

The Honorable Court of Appeals in this cause did not seem to grasp the purpose of Congress in enacting this law. That above all things it intended to save American farm homes and restore them to proper condition. It intended this Act should be applied to the case at bar. That the Judiciary Committee of the Senate in reporting S. 1935 on August 1, 1939, said:

"We may state further that many of the district courts and some of the circuit courts of appeals and Supreme Court have given a proper construction of the language in the present act, but we are sorry to note that others have misconstrued it."

There were more inferior Federal courts against than for it.

That it was the duty of said court to construe this Act in that light and apply said Act to this case. Instead of that it erroneously turned away from said purpose and

approved the action of the District Court in depriving the debtor of the benefits of the Act and in terminating the moratorium and taking the land from him and ordering it sold and requiring him to pay double the value of the land, which the court had found he could not do, and thereby utterly defeated the purpose of said remedial Act.

Enough has been said for the present.

It is, therefore, respectfully submitted that this case is one calling for the exercise by this Court of its supervisory powers; that this Court should grant said petition for a writ of certiorari herein commanding said Honorable Circuit Court of Appeals of said Circuit to send the record and proceedings in said cause to this Court without delay so that this Court may review and act thereon as of right and according to law and as ought to be done. And the petitioner prays this Court to reverse the order and judgment of said Circuit Court of Appeals, and to grant his petition to prosecute this appeal *in forma pauperis*.

Respectfully submitted,

SAMUEL E. COOK,
Huntington, Indiana;
WM. LEMKE,
Fargo, N. Dakota,
Counsel for Petitioner.

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CHARLES ELMORE CROPLEY
CLERK

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 51

JAMES M. WRIGHT,

Petitioner,

vs.

**THE UNION CENTRAL LIFE INSURANCE COM-
PANY AND WILLIAM F. REMMELL, TRUSTEE.**

**ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF
APPEALS FOR THE SEVENTH CIRCUIT**

APPELLANT'S SUPPLEMENTAL BRIEF.

✓ **WILLIAM LEMKE,
SAMUEL E. COOK,
Counsel for Petitioner.**

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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1940

No. 51

IN THE MATTER OF JAMES M. WRIGHT, DEBTOR.

JAMES M. WRIGHT,

Petitioner and Appellant,

vs.

THE UNION CENTRAL LIFE INSURANCE COM-
PANY, WILLIAM D. REMMELL, TRUSTEE,

Respondents and Appellees.

APPELLANT'S SUPPLEMENTAL BRIEF.

*To the Honorable Charles Evans Hughes, the Chief Justice
and the Associate Justices of the Supreme Court of the
United States:*

Preliminary.

Certiorari was granted in the above cause on May 20, 1940 (84 Law Ed. 901).

This Court granted appellant leave to proceed in *forma pauperis*. Under that, the petition for certiorari and the supporting brief, have been printed. This petition and supporting brief are still before the court and we ask that

they be considered by it in passing on the merits of the questions presented by the record.

It has not been disputed but that the appellant has taken all of the steps necessary to bring his case before this Court and that his brief in support of his petition is in proper form and shows the jurisdiction of this Court and the errors relied on for reversal.

A decision of this Court handed down since the petition and briefs were filed, and further investigation of the authorities, have brought out further reasons why the judgment of the Court of Appeals should be reversed.

Hence, the appellant now submits the following supplemental brief to be considered with the supporting brief:

Point 30. The last point in the original brief is 29, hence we start with the above.

This being a remedial statute to save American farm homes, it must be liberally construed to carry said purpose and the courts in construing and applying it must not allow anything to stand in the way of giving the farmer the benefits of the act. Hence, the court erred in forfeiting the land in the case at bar because the debtor could not refinance himself within the three years.

John Hancock Mutual Life Ins. Co. v. Bartels, 308 U. S. 180, 84 L. Ed. 154.

Point 31. When does the period of redemption expire in the case at bar? Subsection (n) was amended by the Act of August 28, 1935. 11 U. S. C. A. 203 (n). It provides: * * * "The period of redemption shall be extended * * * for the period necessary for the purpose of carrying out the provisions of this section." Clearly meaning section 75 as amended by adding amended subsection (s). This made that period elastic and extended it until the provisions of the section were carried out. One of the provisions of that section is paragraph (3) (s). It provided that the debtor

may request and the court is commanded . . . to "cause a re-appraisal of the Debtor's property" . . . or "in its discretion set a date for hearing and after such hearing, fix the value of the property in accordance with the evidence submitted" (11 U. S. C. A. 203 (3) (s)). In a way the court took the first step by hearing evidence and it fixed the value of the land at \$6,000.00. It halted on the next by refusing to enter an order that when the debtor paid that sum into court it would—"thereupon" . . . "by an order, turn over full possession and title of said property "free and clear" of incumbrances to the Debtor." The debtor would have to make a loan to do this. It is evident that the first step to clear the way to rehabilitation or redeeming the land would be for the court to make an order providing for the appraisement and that the debtor be allowed to redeem by allowing him to pay that sum into court and that when that was done, the latter would . . . "by an order, turn over full possession and title . . . to the Debtor" and also discharge him of the remainder of the debt." All courts have the implied power to make appropriate orders to carry out an Act of Congress. How else could the relief granted here, have been carried out. This provision and question was properly before the District Court and it ignored it. It made no finding thereon. This is one of the provisions of paragraph (3) (s) and the court refused to pay any attention to it. A failure of the court to find on a proper issue, is a finding against the debtor on that point. All the debtor could do was to request this appraisement and for an order allowing him to redeem at the appraised value and when that was paid in, that the court would enter an order turning the land over to him and discharge him of the balance. He could not make the court do this. No part of the machinery of the Act would move a cog until the court made such an order. It was the only power on earth that

could start that machinery. It refused to start the machinery and thereby refused to carry out the vital provisions of this Act and according to its provision, the period of redemption will not begin to run until the court enters such an order. Time can not be counted against the debtor on the period of redemption until he is given a chance to redeem and refuses so to do. The creditor can not obstruct the action of the court and have it refuse to enter such an order and then say the period of redemption has run. A litigant can not take advantage of its own wrong.

Hence, it is clear the court had no power to refuse to carry out this provision of the Act and end the period of redemption and arbitrarily take the land from the debtor and by making it possible for it to bid its whole debt at said sale and thereby defeat rehabilitation and deprive the debtor of the benefits of the Act.

Point 32. The refusal of the court to give the debtor the benefits of this Act—the right to redeem—makes its order terminating the period of redemption utterly null and void.

Point 33. The District Court and Court of Appeals were bound to know that the action denying the debtors right to redeem unless he paid \$16,000.00 for \$6,000.00 worth of land made redemption and rehabilitation utterly impossible and thereby aided the creditor to defeat the purpose of Congress to effect rehabilitation.

This Court has denounced such action and held the court could enjoin it.

Wright v. Union Central, 304 U. S. 502, 82 L. Ed. 1490 (1501).

Point 34. It must not be overlooked that this elastic extension of the period of redemption in amended subsection (n) by the Act of August 28, 1935, was before this Court in *Wright v. Union Central*, 82 L. Ed. 1490 (1501), and the

Court said: "We do not think the provision for extension of the period of redemption in section 75 (n) is invalid." If Congress did not have the power to bring this debt of \$16,000.00 down to the real value of the security and allow the distressed debtor to redeem his home at its present value and discharge him of the balance, then the delegation of the power—"To establish . . . uniform laws on the subject of Bankruptcies throughout the United States," would be in vain. It would destroy that part of the Constitution and likewise destroy the independence of Congress which is charged with the obligation of carrying out that great instrument: "To make all laws which shall be necessary and proper for carrying into execution the foregoing powers."

And also strip Congress of the power to adopt such means as it deems necessary to execute its Constitutional powers.

The action of the courts below in allowing this powerful creditor to defeat the purpose of this Act of Congress by arbitrarily demanding a sale of the property, results in making it a power higher than the government. It can not be. It never should be that Congress in the exercise of its great power over this subject is so feeble that it can not require a creditor to take the value of his security in order to make it possible for a farmer debtor to save his home. He has been the backbone of our great democracy since Lexington and will never desert it.

Let us not be deceived: Every part of the record in this cause shows, as plain as day, that it is the sole purpose of this powerful creditor to take this home from this debtor and defeat his right to redeem it under this humane remedial Act of Congress and turn him and his family out on the highways.

This Court has held that Congress has the power to provide for the rehabilitation and reorganization of the farmer debtor. This can not be done in this case except by allow-

ing him to redeem his land at its present value and discharge him of the balance of his oppressive indebtedness and "permit him to start afresh."

Wright v. Union Central, 304 U. S. 502, 82 L. Ed. 1490 (1499-1500-1501).

Point 35. Since the petition and supporting brief were filed in this case, this Court has decided *Borchard v. California Bank* (May 20, 1940), 84 L. Ed. Adv. Op. 867. This decision is in line with the ground taken by this Court in the *Bartels* case and the *Kalb* case in favor of a proper construction of this remedial Act for the relief of the "distressed farmer Debtor."

We rely on that decision. It sustains the debtor's position in this case and rejects the position of the creditor and condemns the judgment rendered herein.

Point 36. Since we have established above that the period of redemption is not definite but elastic and can not begin to run until the provisions of Section 75 paragraph (3) are granted—i. e., the right given therein to redeem, and the obligation of the court to allow the debtor to have the value of the land fixed and the obligation of the court to carry the Act out by an appropriate order allowing him to redeem at the appraised value, so that he can secure a loan with which to redeem. That is the very first thing the court must order or he never can raise the redemption money. Hence, until the court makes such an order under said section he will be as helpless as a child to secure a loan with which to redeem. The second vital step is an order of the court providing when the appraised value is paid into court, the latter will discharge the balance of the debt. No one would loan him five cents until he can make his title good. His title will not be good until he can show this mountain of debt of \$10,000.00 is removed. It would drive

away all of the loan agents in Indiana until he had an abstract showing an order of the District Court that the debt will be brought down to meet the value of the land and that the balance would be discharged. That is what this Court in the *Wright* case meant in speaking of relieving him of oppressive indebtedness and permitting him to start afresh.

Wright case, 82 L. Ed. 1490 (1499-1500-1501).

Point 37. We state again that as long as the period of redemption has not ended the debtor has the right to redeem and until it does end the court can not forfeit the land and take it from him and sell it.

Point 38. How does the *Borchard* case settle the case at bar? In that case the period of redemption had not expired. The mortgage debt was over \$89,000.00. The court found the land was only worth \$65,000.00. Over \$24,000.00 of a deficiency. The bank while the period of redemption still existed, as here, applied to the District Court and showed that the debtors could not pay the debt and that it should be allowed to sell the land to save further loss. The District Court so ordered. The Court of Appeals affirmed the decision below. This Court reversed the Court of Appeals, holding that the action of the District Court permitting a sale at this stage of the proceedings (before the period of redemption had expired) was contrary to the provisions of section 75 (s).

Borchard case, 84 L. Ed. 867 (870).

Point 39. The court placed its decision on the ground that the period of redemption had not expired and that the debtor was entitled to remain in possession of his land during the period of redemption. In other words, as long as the right to redeem exists there can be no sale of the land ordered.

Borchard case, 84 L. Ed. 867 (870).

Point 40. Here was a possibility of the creditor having to scale its debt down over \$24,000.00 and with that before it this Court significantly stated:

“As pointed out in the Wright Case, *supra*, the secured Creditor's rights are protected to the extent of the value of the property.”

Borchard case (870).

This Court meant by that that the \$89,000.00 debt was only worth \$65,000.00, the value of the security.

The decision in the case at bar is in the teeth of and so conflicts with the later decisions in the *Bartels*, *Kalb*, and *Borchard* cases that it can not stand and will have to be reversed to bring about uniformity in the decisions on the meaning and construction of this remedial Act.

Point 41. The court in the *Borchard* case termed the proceedings to sell the land before the end of the period of redemption as “disorderly and unauthorized.”

Point 42. It must not be overlooked that there is not a single cause found by the court in the special findings which of itself would authorize the court to end the period of redemption and forfeit the land and order it sold at public auction. Hence, the only remaining reason is that the court ended the period of redemption and ordered a sale because the creditor demanded it. Congress never intended that in the face of a request of the debtor for an appraisal and right to redeem which is one of the provisions of the Act—the creditor could defeat that request by demanding a public sale without giving any reason in a court of equity for it. Congress intended the court should hear the evidence and not grant it if it would defeat his right to redeem and save his home. The court erred in not giving the debtor the preference and in not holding that the alleged right be subordinate to the right to save the land.

Point 43. The other alternative in construing the Act is that it was the duty of the court to carry out the Act, bring the debt down to the value of the security, and allow the debtor to redeem. The court should have disregarded the provision which purports to give it that right and held it so repugnant to the purpose of the Act as to wholly defeat it and hence was null and void.

Point 44. But someone will say that is asking a great deal to request this great court to deliberately reject a clause inserted in an Act of Congress. That that is radicalism run wild. The very opposite is true and the sound doctrine and it would be wrong to refuse such a thing. This contention is based upon reason and all of the authorities and no authority can be found which denies or rejects that doctrine, as a sound legal principle.

Point 45. This Court has two great powers conferred upon it: (1) To declare Acts void as repugnant to the Constitution, and (2) To construe the language of the Act and cast that out which would defeat it and make the result an absurdity.

In that kind of a case the language of the Act says such is the law. But the court must say notwithstanding the language of Congress it is not the law. It is void. Is that any different than the Act in question here? No. True, the language purporting to give the creditor the right to defeat this Act is there. But taken literally it would defeat the whole purpose of the Act and make the body of the Act no law at all and a farce and a sham. Hence, it is not the law. The body of the Act excludes it. "*Expressio unius est exclusio alterius.*" It gives the right to save farm homes and this discordant language (like a discord in music throws the whole tune out of harmony) perverts it into an Act to take farm homes from insolvent farmers and set them out

in the highway. A construction of this language so as to allow a creditor to thus defeat the purpose of Congress, leads to such an absurdity as to instantly impel the court to reject and cast it out. It is absurd to contend Congress ever intended to stultify itself with such an absurdity. When the farmer asked for "bread" it handed him a "stone" and when he asked for a "fish" it gave him a "serpent".

No, it is not radicalism to exclude this discordant language, but would be rank error to consider it at all.

Congress has no power to pass a law in one sentence and in the next destroy it. That which purports to defeat the law is no law at all and is no part of the Act.

"The intent of the lawgiver is the law" and it would be a reproach on the courts for them to allow anything to stand in its way.

Point 46. Congress has no judicial power. Its sole power is to enact laws. Not to construe them. The exclusive power to construe them resides in this Court. It is the "*ultima ratio*" as to the meaning of an Act and must determine whether any part of it is so repugnant and discordant, as that it can not stand and will have to be disregarded in order to carry out the great purpose of the Act.

Point 47. This is not visionary but the law as laid down by the decisions of this Court and the existing standard text books on the subject of—"Of Statutory Construction".

It starts with Blackstone. In the first edition of American and English Encyclopaedia of Law, 176 pages are devoted to—"Interpretation and Construction" of statutes. In the Digest of the decisions of this Court there are 19 pages. In the last edition of *Corpus Juris* there are 150 pages. In Ruling case Law there are 97 pages. American Digest Decennial, 306 pages. Then there is the great work of Lewis-Sutherland Statutory Construction. All of them

recognize the doctrine that courts have the power to exclude and disregard repugnant clauses which would defeat the manifest intent of the law-making body.

Point 48. Let us go back to the record and restate the real question before this Court:

The first clause of Paragraph (3) of amended subsection (s) of Section 75 provides in substance. (1). That at or prior to the period of three years the Debtor may pay into court the amount of the first appraisal of the land. (2). That upon request of the Debtor the court shall appoint appraisers to make a second appraisal of the land or the court should hear evidence and fix the value of the same. This would also require the court to make an order that the Debtor be allowed to redeem at said value and that when that was paid into court the latter would turn the property over to him free of the mortgage debt. This would also require an order of the court discharging him of the debt exceeding the value of the security. (3). The next clause purports to give the Creditor the arbitrary right to request a sale and on its face requires the court to make such an order.

(11 U. S. C. A., 20B (s) (3)).

We have shown that in the judgment in this case that none of the provisions of the Act authorized the court to end the case and order the land sold for any of the alleged reasons set out in the finding. Hence, the only thing left was, it was ordered sold simply because the Creditor arbitrarily demanded it. That is the court used the 3rd. clause to defeat the right to redeem at the appraised value. We contend that Congress intended this Act should apply to cases like the one at Bar and that the court should have given the Debtor the preference and denied the sale and allowed him to redeem or that it should have held that the 3rd. clause

being directly opposite to the second, that giving it a literal construction would wholly defeat the right to redeem and defeat the whole purpose of Congress in enacting the law to save farm homes. That being so repugnant and conflicting the court should have wholly disregarded the 3rd. clause and given the Debtor the benefit of the Act and refused to take the land from him and sell it and require him to pay \$16,000.00 for \$6,000.00 worth of land.

Point 49. Let us call attention to some of the decisions which show that the court should have disregarded this 3rd. clause and allowed the Debtor to save his Home.

(a) "There are three points to be considered in the construction of all remedial statutes; the old law, the mischief and the remedy; that is, how the—law stood at the making of the Act; what the mischief was for which—the law did not provide; and what remedy the parliament hath provided to cure the mischief. And it is the business of the Judges to so construe the Act as to suppress the mischief and advance the remedy."

Blackstone (87).

"A saving, totally repugnant to the body of the Act is void."

Ibid, p. 89 (Star).

"Lastly, Acts of parliament that are impossible to be performed are of no validity and if there arises out of them collaterally any absurd consequences, manifestly contrary to common reason, they are, with regard to those collateral consequences, void."

Blackstone (91).

We quote the rule as laid down by Lewis-Sutherland Statutory Construction Vol. 2 (2d) 376 (322), p. 721 and other authorities:

"The mere literal construction of a section in a statute ought not to prevail if it is opposed to the intention

of the legislature, apparent by the statute and if the words are sufficiently flexible to admit of some other construction it is to be adopted to effectuate that intention. The intent prevails over the letter, and the letter will if possible, be so read to conform to the spirit of the Act."

"As the intention of the legislature embodied in a statute, is the law, the fundamental rule of construction, to which all others, are subordinate, is that the Court shall by all aids available, ascertain and give effect to the intention of the maker."

59 *Corpus Juris*, 948-952. Many cases cited.

"But, when the intention (of the legislature) can be ascertained with reasonable certainty, words may be altered or supplied in the statute, so as to give it effect and avoid any repugnancy to or inconsistency with such intention."

23 *American and English Enc., Law* p. 419. Citing many cases.

"And since the office of a proviso is not to repeal the main provisions of the Act but to limit their application, no proviso should be so construed as to destroy those provisions. A construction of a proviso which would make it plainly repugnant to the body of the Act should be rejected if possible * * *. The true rule is that a proviso or saving clause which is directly repugnant to the purview or body of the Act is inoperative and void for repugnancy."

25 *R. C. L.*, Section 232, pp. 986-987.

"We are of the opinion that where a proviso is wholly repugnant to the purview of the law, it is inoperative and void."

McKnight v. Hodge, 40th. L. R. A. (N. S.), 1207 (1213).

"Contradictory clauses in Acts will be deleted to give effect to clear legislative intent."

Cherry v. Leonard, 75 S. W. (2d) 401.

"Proviso which is repugnant to body of statute and which cannot be reconciled therewith, is void."

Reuter v. Board, 30th Pacific (2d) 417.

"Where intention and purpose of a legislative enactment is clear and unmistakable from consideration of whole Act, a proviso will not be given effect as written, when so to do would defeat the obvious legislative purpose and intent, nullify the other detailed provisions thereof, and reduce the Act as a whole to an absurdity."

Roseberry v. Norsworthy, 100 So. 514.

"In construing a statute every section, provision, and clause should be expounded by reference to every other, and, if possible, every clause and provision be given and have the effect contemplated by the legislature. One portion of a statute should not be construed to annul or destroy what has been clearly granted by another."

Peck v. Jennies, 7 How. 612, 12 L. Ed. 841.

a. A construction of a statute producing absurdities, or consequences in direct violation of its own provisions, is to be avoided.

Huidekoper v. Douglass, 3 Cranch 1, 2 L. Ed. 347.

c. In case of doubt a literal construction leading to an absurdity will be rejected in favor of a more liberal one which will effectuate the object intended.

Wilson v. Mason, 1 Cranch 45, 2 L. Ed. 29.

We quote from *Hawaii v. Mankichi*, 47 L. Ed. 1016 (1021) (190 U. S. 197):

"Without going back to the famous case of the drawing of blood in the streets of Bologna, the books are full of authorities to the effect that the intention of the law-making power will prevail, even against the letter of the statute, or, as tersely expressed by Mr. Justice Swayne in *Smythe v. Fiske*, 23 Wall. 374, 380; 'A thing may be within the letter of a statute and not within its meaning

and within its meaning, though not within its letter. The intention of the law-maker is the law.' A parallel expression is found in the opinion of Mr. Chief Justice Thompson of the Supreme Court of the State of New York. (Subsequently Mr. Justice Thompson of this Court,) in *People v. Utica Ins. Co.*, 15 Johns 358, 381: "A thing which is within the intention of the makers of the statute is as much within the statute as if it were within the letter; and a thing which is within the letter of the statute, is not within the statute unless it be within the intention of the makers."

"All laws," said the Court, "Should receive a sensible construction. General terms should be so limited in their application as not to lead to injustice, oppression, or an absurd consequence. It will always, therefore, be presumed that the legislature intended exceptions to its language, which would avoid results of this character. The reason of the law in such cases should prevail over its letter."

Statutes should not be literally interpreted at the expense of the reason of the law and producing absurd consequences or flagrant injustice."

Sorrells v. United States, 287 U. S. 435, 53 S. Ct. 210; 77 L. Ed. 413.

"If a literal interpretation of any part would operate unjustly, or absurdly, or contrary to the meaning of the Act, it should be rejected. The construction must be such that the whole can stand if possible. There is no better way of discovering the true meaning of a law when there are expressions in it which are rendered ambiguous by their connection with other clauses, than by considering the necessity for it and the causes which induced the Legislature to pass it."

Heydenfeldt v. The Daney, 93 U. S. 634, 23 L. Ed. 996.

"On the contrary it (the statute) should be interpreted and enforced by the light of the fundamental rule of carrying out its purpose and object, of affording the remedy which it was intended to create and defeat-

ing the wrong which it was its purpose to frustrate."
Rhodes v. State, 42 L. Ed. 1094.

The sole purpose of this Act of August 28, 1935, was to save American farm Homes. To regard the 3rd clause here and allow the Creditor to demand a sale, will kill the right to redeem at the appraised value as dead as Julius Caesar and defeat the whole Act and make it no law at all.

This 3rd clause gains no force or priority because it happens to be the last clause in question.

Ruling Case Law Sec. 251, P. 1011-1012.

"Where one section of a statute conforms the obvious policy and intent of the legislature it is not rendered inoperative by inconsistent provisions in a later section which do not conform to this policy and intent."

Ruling Case Law Sec. 251, P. 1012.

"But when the Court is confronted with an ambiguity, or an absurdity would arise from giving the language its ordinary meaning, the rules of construction are invoked to ascertain the true legislative intent, and the letter of an act may be sacrificed only so far as is necessary to give effect to such intent."

23 Am. & Eng. Encyc., P. 412.

"And, on the other hand, words and phrases which might operate to defeat the clear purpose of a statute, or which would have no sensible meaning, should be eliminated; notwithstanding the rule that full effect must be given to every part of a statute."

23 Am. & Eng. Encyc., P. 420.

"There is a strong presumption against absurdity in a statutory provision; it being unreasonable to suppose that the legislature intended their own stultification. So, when the language of an Act is susceptible of two senses, that sense will be adopted which will not lead to absurd consequences."

23 Am. & Eng. Encyc., P. 362.

The mere statement of these points and the quotations from the above authorities are an argument of themselves and further argument would be largely a matter of repetition.

Enough has been said. That this is an important case can not be denied. It will touch every agricultural section of our great Country, and will be discussed around the fire-sides of American farm Homes. If the farm Debtor is entitled to redeem his home on the basis of the present value of the land, it will lift a great load from the shoulders of those who till the soil and are crushed down by "oppressive indebtedness" and enable thousands to retain their homes and the savings of a life-time. Then too, it will enable this class "to start afresh" and step forth as independent men and women able to look the whole world square in the face. On the other hand, to be deprived of this relief will drive thousands and their families from their homes, and force them out into the world in their old days. They will "leave hope behind."

We hope our presentation of the questions here have been such as to aid the Court and lighten its great labors.

Respectfully submitted,

SAMUEL E. COOK,
Counsel for Appellant.

WM. LEMKE,
Counsel for Appellant.

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1939.

No. [REDACTED] 51

IN THE MATTER OF JAMES M. WRIGHT, DEBTOR.

JAMES M. WRIGHT,
Petitioner-Appellant,

vs.

THE UNION CENTRAL LIFE INSURANCE COM-
PANY, WILLIAM D. REMMELL, TRUSTEE,
Respondents-Appellees.

**BRIEF FOR RESPONDENT-APPELLEE, THE UNION
CENTRAL LIFE INSURANCE COMPANY, IN OP-
POSITION TO PETITION FOR CERTIORARI.**

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1939.

No. 901

IN THE MATTER OF JAMES M. WRIGHT, DEBTOR.

JAMES M. WRIGHT,
Petitioner-Appellant,

vs.

THE UNION CENTRAL LIFE INSURANCE COM-
PANY, WILLIAM D. REMMELL, TRUSTEE,
Respondents-Appellees.

**BRIEF FOR RESPONDENT-APPELLEE, THE UNION
CENTRAL LIFE INSURANCE COMPANY, IN OP-
POSITION TO PETITION FOR CERTIORARI.**

STATEMENT.

The farm land involved herein is the 200 acre tract with respect to which this Court reversed the United States Circuit Court of Appeals (7th Circuit) in *Wright v. Union Central Life Insurance Co.*, 304 U. S. 502. 585 Ct. 556, 82 L. Ed. 1490. This Court held that the Bankruptcy Court acquired exclusive jurisdiction of the land and consequently it was required to be administered there.

Thereafter, and consistent with said holding, Respondent filed its petition in the Bankruptcy Court setting up in detail the history of the loan, the subsequent proceedings had and the facts establishing debtor's failure to comply with the terms of Section 75 (s) and orders entered pursuant thereto and his demonstrated inability to reinstate himself financially. The petition asked that, on the basis of such facts, this property be dismissed from the proceeding, or, in the alternative, it be sold at public auction as provided in the Act (Sub-sec. (s), par. 3):

Debtor then petitioned the Bankruptcy Court to dismiss Respondent's petition but same was denied by order entered September 22, 1938. *From this order no appeal was prayed or effected.* Debtor then filed an answer to the petition, largely denying the facts stated in the latter. Upon the issues thereby made an open court hearing was had in the Bankruptcy Court. Witnesses were heard on both sides, arguments were made and briefs filed. On February 11, 1939, the Bankruptcy Court made a number of specific Findings of Fact and in accordance therewith on the same date entered its decree ordering the property sold at public auction and allowing debtor ninety (90) days to redeem therefrom as provided in the Act. This order was affirmed by the Circuit Court of Appeals (*Wright v. Union Central Life Insurance Co.*, 108 F. (2d) 361), and Petitioner seeks a review of the judgment of that Court.

In view of debtor's erroneous assumption in the Court of Appeals and in his present petition that Respondent is still attempting to question the jurisdiction of the Bankruptcy Court, we again emphasize the following: When this Court, in its former opinion, held that the Bankruptcy Court had exclusive jurisdiction of this farm land, Respondent promptly accepted that holding as final and as the law of this case. By its petition Respondent

invoked the jurisdiction of the Bankruptcy Court. In so doing it could not and did not question that jurisdiction.

Debtor's petition herein fails to make clear another very pertinent fact. The order of sale by the Bankruptcy Court was entered on February 11, 1939—*more than three years after debtor's petition was filed under sub-section (s), as amended August 28, 1935.* Hence, at the time of the Court's findings and order of sale, debtor had enjoyed a full three-year moratorium under the Act—to say nothing of a "self-made" prior moratorium dating back to about 1930.

The substance of the Bankruptcy Court's Findings of Fact and of the record upon which its order of sale was predicated are detailed in the opinion of the Circuit Court of Appeals (108 F. (2d) -361) and a repetition thereof would serve no useful purpose.

The basic contentions advanced by the Petition for Certiorari appear to involve the following:

That the order of the Bankruptcy Court and its affirmance by the Court of Appeals are in conflict with the express terms of Section 75 (s), as amended, and the decisions of this Court in *John Hancock, Etc., Ins. Co. v. Bartels*, 308 U. S. 180, 84 L. Ed. 154, and *Kalb v. Feuerstein*, 308 U. S. 433, 84 L. Ed. 281.

We believe neither of these bases is sound, as we shall point out in Argument.

Analysis of Petitioner's Points.

The Petition for Certiorari and the brief in support thereof are too extended and too replete with reiteration to attempt categorical observations with respect to the detailed contentions advanced therein. Accordingly, we submit an analysis of same, with suggestions in answer thereto.

1. Petitioner's contention or assumption that Respondent raised a question as to the jurisdiction of the Bankruptcy Court in this proceeding has been answered in the above statement.

2. Petitioner urges that the Findings of Fact made by the Bankruptcy Court were not supported by sufficient evidence or were contrary thereto.

In the first place, ordinarily this Court will not try questions of fact in granting or refusing a petition for certiorari. Even when a petition is granted, adjudicated facts are seldom disturbed if established by the concurrent opinions of two courts below. They were so established in the instant case.

Secondly, Petitioner utterly fails to demonstrate where in the Findings were incorrect or improper. His statements with respect thereto are limited to argument and conclusions.

Thirdly, Findings of Fact by the District Court, who saw and heard the witnesses, are presumptively correct and will not be disturbed unless shown to be clearly wrong and without support of evidence.

Rule 52 (a) Rules of Civil Procedure, U. S. Sup. Ct.

United Shoe Machine Corp. v. U. S., 258 U. S. 451, 425 Ct. 363, 66 L. Ed. 708.

Cunningham v. Merchants Nat'l. Bank, 4 F. (2d) 25 (C. C. A. 1st).

Hagen v. Hawley, 86 F. (2d) 217, (C. C. A., D. C.) Cert. Den. 299 U. S. 613.

3. Petitioner contends that the Act of March 4, 1938 (11 U. S. C. A. 203 (s)) extended his moratorium to March 4, 1940 and that by Act of the present Congress same was further extended to 1944.

By the very terms of these Acts it is manifest that Congress did not intend or purport to extend moratoria effected by previous petitions under Section 75 (s). The extensions amended only sub-section (c) to enable farmer-debtors who had not filed petitions within the time originally limited to March 4, 1938, to seek relief under Section 75 at any time within the extended period. Petitioner can cite no holding of this or any other Court to support his contention. Further, if the latter were sound, the Act of June 22, 1938 (C. 575, 52 Stat. 840, 939), conditionally authorizing extension of existing moratoria to November 1, 1939, was unnecessary and meaningless.

Counsel for Petitioner urged this contention in his petitions for certiorari in *Lowman v. Federal Land Bank, etc.*, case No. 785, and in *Moon v. The Union Central Life Insurance Co.*, case No. 854, both at this Term. These petitions were denied, respectively, on April 1, 1940 and April 29, 1940. While it is recognized that the granting or denial of a petition for certiorari represents no adjudication upon the merits of the particular case, nevertheless the Court must have considered the above point in its denials of certiorari and this is certainly persuasive in the instant case which presents the same question.

4. Petitioner vehemently asserts that the Bankruptcy Court's Findings of Fact are insufficient to justify a sale

under the power given that Court by paragraph (3) of sub-section (s).

It is clear from the Findings of Fact, the substance of which appears in the opinion of the Circuit Court of Appeals,

(a) That Petitioner failed to comply with the provisions of the Act in that he *never* submitted an offer of extension or compromise (bona fide or otherwise);

(b) That he failed to pay a "reasonable rental" as required by the Act and

(c) That he displayed a contemptuous attitude toward the Court by announcing to the Trustee that he would deliver no crops (the fixed rental) until the determination of the case and if defeated he would never do so.

The rental was not only required to be paid by the terms of the Act but by the express order of the Bankruptcy Court made pursuant thereto. Hence, petitioner likewise failed to comply with the order of Court.

Petitioner attempted and attempts herein to excuse his retention of the crops to his own use and benefit and his defaults above stated by claiming to have used a portion of the proceeds of one year's crop to pay for roof repairs. Even if true, this only involved one year and ignores other periods. Also, the terms of the Act and the order of Court required the payment of rental "into Court". The Act provides the first application of rental so paid is for *taxes*. This was never done but Petitioner apparently felt that he was entitled to supplant the Bankruptcy Court, retain the rental and apply it as, when and where he chose.

Petitioner's assertion that Respondent waived the submission of an offer of composition or extension hardly warrants a reply. That is a requirement of the Act and was a matter between Petitioner and the Bankruptcy Court to which he had applied for relief. Respondent

could not and, in fact, did not attempt to act for the Court as to statutory requirements.

The further element authorizing a discretionary sale by the Bankruptcy Court under paragraph (3) was also present. The obvious impossibility of "financial rehabilitation" was demonstrated throughout and at the expiration of the three year period. This was established by the Court's Findings of Fact, is apparent from the recitals in the opinion of the Court of Appeals and cannot seriously be questioned.

Consequently, the discretionary authority of the Bankruptcy Court to order a public sale, as expressly provided in paragraph (3) of subsection (s) must be conceded.

In addition to the foregoing, the Court also found that a written demand for a public sale had been made by Respondent as a secured creditor having a lien on the property. A sale pursuant thereto is expressly directed by paragraph (3). We have in mind that the three year period had expired when the sale was ordered.

5. Probably the contention most seriously urged by Petitioner is that by Section 75 (s) he was intended to have and had an absolute right to "redeem" the farm property at its present appraised value and that this right could not be defeated by the provision for a public sale at which the secured creditor might bid without restriction as to amount. This provision he terms a "joker".

The answer to this contention is, primarily, two-fold. In the first place there is nothing in the Act to support it, expressly or inferentially and no Court has ever indicated or upheld it.

Secondly, and more to the point, the sale provisions of paragraph (3) of sub-section (s) were inserted by the amendment of August 28, 1935 with the express intention of avoiding one of the unconstitutional features of the

original Frazier-Lemke Amendment. (*Wright v. Vinton Branch etc. Bank*, 300 U. S. 440, 57 S. Ct. 1025, 82 L. Ed. 1490.) Respectfully, we draw attention to this Court's recitals of the Congressional debate when the amendment of August 28, 1935 was under consideration and the fact shown thereby, that a limitation on the bidding rights of the secured creditor was intentionally and expressly rejected before the Committee approved and submitted the Bill for passage.

This precise question was again before the House Judiciary Committee of the present Congress in its discussion of the amendment approved March 4, 1940. It was again proposed that the farmer-debtor be granted the right to regain title by payment of the appraised value. However, such provision was rejected, the Committee reporting against it on the ground of probable unconstitutionality under the decisions of this Court in the *Vinton Branch* case (300 U. S. 440), *Radford* case (295 U. S. 555) and the *Bartels* case (308 U. S. 180, 84 L. Ed. 154). Incidentally the *Bartels* case appears to be one of the authorities most relied on by Petitioner.

If, as Petitioner urges, the provisions for public sale in paragraph (3) constitute a "joker", Congress so provided after due consideration and this year has confirmed its previous decision. The Court will not deliberately read out of a statute a provision which Congress purposely inserted therein.

This was the second principal point advanced by counsel for Petitioner in the *Lowman* and *Moon* petitions for certiorari (*supra*) recently denied by this Court. Without fear of contradiction we can safely assert that counsel's reasons there were entirely in accord with those urged in the instant case.

In its Findings of Fact the Bankruptcy Court found the

present value of the farm property to be \$6,000.00. This was based upon debtor's own estimate. At that time the mortgage indebtedness was slightly less than \$16,000.00 and debtor complains that he should not be required to pay the higher figure for redemption but should be allowed to regain title and possession by payment of the present value. However, in the present petition debtor ignores the fact that there was no evidence that he could raise enough money to redeem even at that figure. It will be noted that this situation is expressly recited in the opinion of the Circuit Court of Appeals. Hence, there is no substance in debtor's complaint on the facts or law.

6. Throughout his petition and brief in support, Petitioner asserts that the order of the District Court and the opinion of the Circuit Court of Appeals were opposed to the holdings of this Court in the Bartels and Kalb cases, *supra*.

These cases are not even comparable. In the first place, both the Bartels and Kalb cases involved proceedings in State courts had after the Bankruptcy Court had acquired exclusive jurisdiction of the properties in question. The instant case involves the administrative action of the Bankruptcy Court exercised after this Court had decided that exclusive jurisdiction was in that Court and it should be administered there.

As far as the instant case is concerned the Bartels and Kalb decisions added nothing to the opinion of this Court in *Wright v. Union Central Life Insurance Co.*, *supra*. The holding there that the Bankruptcy Court acquired jurisdiction of the farm here involved indicated the propriety of the proceedings had thereafter in the Bankruptcy Court, which proceedings Petitioner now attacks herein.

The order appealed from was an order entered in due course of the administration of this property by the Bankruptcy Court. In so far as that order also may have involved any permission or validation of any action taken in the State court foreclosure, the authority for same was recognized in *Kalb v. Feuerstein, supra*, and in *Union Joint Stock Land Bank v. Byerly* (case No. 579) decided by this Court on April 22, 1940. However, the title claimed by Respondent is that acquired through sale in the Bankruptcy Court.

Conclusion.

It is respectfully submitted that Petitioner has demonstrated no ground for certiorari and his petition should be denied.

Respectfully submitted,

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IN THE
Supreme Court of the United States

OCTOBER TERM, 1940.

No. 51 In Bankruptcy

IN THE MATTER OF JAMES M. WRIGHT, DEBTOR.

JAMES M. WRIGHT,

Petitioner (Appellant),

vs.

THE UNION CENTRAL LIFE INSURANCE COM-
PANY, WILLIAM D. REMMELL, TRUSTEE,
Respondents (Appellees).

BRIEF OF APPELLEE-RESPONDENT,
THE UNION CENTRAL LIFE INSURANCE COMPANY.

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BRIEF OF APPELLEE-RESPONDENT, THE
UNION CENTRAL LIFE INSURANCE COMPANY.

*To the Honorable Charles Evans Hughes, Chief Justice,
and the Associate Justices of the Supreme Court of the
United States:*

Statement of Record.

In the brief filed by Appellee-Respondent in opposition to the Petition for Certiorari herein, we outlined the procedure had since this Court reversed the judgments of the United States District Court for the Northern District of Indiana and the United States Circuit Court of Appeals for the Seventh Circuit on the previous appeal (304 U. S. 502, 82 L. Ed. 1490).

As stated in that brief, said reversal affected only the 200 acre farm involved herein. The primary basis of the decision was that Section 75 (s) of the Bankruptcy Act, as amended August 28, 1935, was constitutional and enforceable and that Debtor's petition thereunder, having been filed prior to the expiration of the State period of redemption from the foreclosure sale, the Bankruptcy Court acquired exclusive jurisdiction of the property and it was necessary that same be administered there.

Consequent to said holding, Respondent went back to the District Court and sought administration of the property in that Court. It filed a very complete petition detailing the proceedings previously had, including the facts of Debtor's default under the Act and the orders of Court entered thereunder. It prayed that the property be dismissed from the proceeding under Section 75 (s) or that, in the alternative, the farm be sold in the Bankruptcy Court as provided in the Act, Subsection (s) (par. 3) (Tr. 21-24).

After his motion to dismiss this petition was denied, Debtor filed an answer thereto (Tr. 29-41). To this answer Debtor later added an amendment (Tr. 45-49) and on the day of the hearing made a further amendment (Tr. 50-53). In the original answer and in the first amendment thereto, Debtor advanced, in substance, the contentions upon which he relies here. In the last amendment, he urged that the issues presented by Respondent had been adjudicated by this Court on the first appeal and that, on the theory of *res adjudicata*, the issues herein were determined by that decision.

Debtor also filed a cross-petition praying for an appraisal of the property and for an order allowing him to redeem same at the appraised value, that the land be turned over to him on that basis, free and clear of the mortgage lien and that he be discharged from any and all liability

by way of a deficiency judgment (Tr. 41-43). To this cross-petition Respondent duly filed its answer (Tr. 44).

Upon the issues thus made, a hearing in open Court was had before the District Judge. Records were introduced in evidence and testimony of witnesses, including the Debtor, Conciliation Commissioner, the Court's Trustee, and others, was freely heard. Debtor placed the then value of the farm at \$30.00 per acre (Tr. 134) or a total of \$6,000 (Tr. 144). In this he was supported by other witnesses and this valuation was not questioned by Respondent.

Evidence was also heard as to the long continued occupancy and use of the property by Debtor, his retention of all the income therefrom, his failure to pay taxes, the disrepair of the property, the fixing of rental by the Court through its Commissioner, Debtor's failure to comply therewith and his open defiance of the Court with respect to same. His limited income was demonstrated as an element of the obvious hopelessness of his financial rehabilitation after the expiration of more than three years and the fact that at no time, since the inception of his proceeding in 1935 had Debtor offered or attempted any proposition of composition or extension.

Debtor claimed that at the first meeting of creditors, December 12, 1934, (under original sub-section (s) he had offered Respondent \$8500.00 and that same was refused. This testimony was denied on the face of the Conciliation Commissioner's Report (Tr. 1-2), from which it appeared that at that time "debtor had no tangible offer to make to his creditors". The fact of any then offer was also denied by the testimony of the Conciliation Commissioner (Tr. 90) and counsel for Respondent (Tr. 108).

At the conclusion of the hearing on the issues made by the pleadings above mentioned, the District Judge disposed of Respondent's petition and the cross-petition filed by Debtor and in so doing made certain Findings of Fact and

noted his Conclusions of Law. As a matter of convenience to this Court, we repeat the same here, as they appear in the Transcript (Tr. 54-55).

"FINDINGS OF FACT.

1. That petitioner owned and held a first mortgage dated October 1, 1925, in the principal amount of \$9000.00 upon the property described in its petition herein; that by decree entered May 27, 1935, in the Circuit Court of Adams County, Indiana, said property was ordered sold to satisfy the indebtedness to petitioner secured by said property and for which a personal judgment was therein entered against debtor; that a sale of said property was had on July 20, 1935, and a Sheriff's certificate of sale was issued to petitioner; that, there being no redemption from said sale, a Sheriff's deed for said property was issued to petitioner on July 26, 1936.

2. Debtor's amended petition under Section 75 (s) of the Bankruptcy Act, as amended August 28, 1935, has been pending since it was filed herein on October 11, 1935.

3. Debtor has not, at any time, made an offer of composition or extension herein, as provided by said Bankruptcy Act, as amended.

4. On or about October 30, 1935, Carman Alexander, Trustee herein, entered into a lease with debtor whereby the latter was permitted to remain in possession of said property upon condition that two-fifths of all crops harvested thereon be paid and delivered to said Trustee or his nominee.

5. In December, 1936, the Trustee herein demanded the share of crops due under the terms of said lease theretofore entered into with debtor but that debtor refused to turn them over at that or at any time unless the law Section 75 (s), as amended August 28, 1935, was held valid.

6. In 1937 no crops were delivered to the Trustee.

7. The total present indebtedness of debtor to petitioner secured by said mortgage amounts to \$15,903.68.

8. No part of the principal amount of said indebtedness has been repaid by debtor since said loan was made October 1, 1925.

9. No taxes assessed against said property for any year since 1929 have been paid by debtor.

10. No interest on the indebtedness secured by said property for any year since 1930, has been paid by debtor.

11. The buildings on said property are in a bad state of repair.

12. The amount of \$7000.00 alleged in debtor's answer to the petition herein to have been expended by debtor to improve said property, was in fact thus expended by him twelve or fifteen years ago.

13. That taxes and insurance on said property since 1929 have been paid by petitioner, The Union Central Life Insurance Company.

14. The value of said property is \$6000.00.

15. Said property is farmed by debtor, his son and son-in-law and they all live thereon.

16. Neither debtor, his son nor son-in-law has any income other than that realized from farming said property.

17. The total income from said property in its best year (1936) was slightly in excess of \$2000. and in its worst year (1937) was approximately \$200.

18. Debtor admits that he could not refinance said property at an appraised value thereof in excess of \$6000., and there is no evidence of his ability to effect said refinancing at that amount.

19. The usual basis of loans made by loaning companies is one-half of the value at which they appraise the property upon which the loan is to be made.

20. In 1934, petitioner offered to accept \$8000. in full of the indebtedness secured by said real estate and has never refused to accept \$8000. or \$8500. therefor.

21. Except for a portion of the 1936 crops delivered to the Trustee herein, debtor has sold and retained the entire proceeds of all crops harvested on said land since said loan was made and has paid nothing therefrom for taxes, interest or insurance since 1930.

22. Debtor's income is grossly insufficient to enable him to reduce or liquidate in any substantial degree his outstanding liabilities or to pay current interest thereon, current taxes against said property and insurance on the buildings located thereon.

23. There is no evidence herein upon which may be based a reasonable hope or expectation of debtor's financial rehabilitation.

24. There is no evidence herein of compliance by debtor with the requirements of said Section 75 (s).

25. Debtor has failed and refused to obey the orders of this court in the matter of making payments semi-annually.

26. In and by its petition herein, petitioner, as a creditor secured by and having a lien on the property described in said petition, has made written request for a public sale of said property.

CONCLUSIONS OF LAW.

Upon the foregoing findings of fact, the Court concludes the law to be as follows:

1. The law is with Petitioner.
2. Petitioner's request for a public sale of said property should be and is granted."

At this point we take the liberty of suggesting that the documents appearing in the printed Transcript of Record, from page 1 to page 17 are not pertinent to the present review except as they were offered in evidence herein. They all, antedated and were involved in the former appeal concerning this property (*Wright v. Union Central Life Ins. Co.*, 304 U. S. 502, 58 S. Ct. 1025, 82 L. Ed. 1490).

The present case is pending on certiorari granted to review the order of sale of the District Court dated February 11, 1939 and affirmed by the United States Circuit Court of Appeals in *Wright v. Union Central Life Insurance Co.*, 108 F. (2d) 361. The latter opinion is set out in full in the printed Transcript of Record (Tr. 153-157).

Summary of Issues Involved.

There are *no disputed questions of fact* presented by the review granted herein. Propositions advanced by Appellant-Petitioner may be summarized as follows; each is controverted by Respondent and will be dealt with in the Argument which follows:

Appellant contends:

1. That Debtor had an *absolute right* to redeem his farm property at the present value—fixed by appraisal or by evidence heard in open court.

2. That this was the intent of Congress and the purpose of the Act and the interpretation thereof must be controlled thereby.

3. That in this instance, the Debtor's right to redeem at the determined present value of the land was defeated by ordering a public sale at which the secured creditor—or anyone else—could bid an amount higher than said value.

4. That the requirement of a sale on demand of the secured creditor defeats the intent of Congress, nullifies the statutory provisions preceding it and should be eliminated from the statute by judicial interpretation.

5. That the Court's sole reason for ordering a sale here was the written demand of the secured creditor.

6. That, while admitting that the Court followed the statute as to fixing the property value, the Court erred in not entering an order awarding the property (absolutely) to the Debtor upon payment of said value, without recourse to sale.

(a) That no period of redemption could begin to run until the suggested entry of the last named order, such period being elastic.

7. That in ordering a public sale, the District Court conflicted with the opinion of this Court in *Borchard v. California Bank, et al.* (.... U. S. 84 L. Ed. 867) decided May 20, 1940, and other decisions.

8. That this Court has a right to declare that

"the language of Congress is not the law. It is void."

(a) Assuming that the intent of Congress does not appear from provisions purposely included in the Act.

9. The primary purpose of the Act must control over provisions deliberately included by Congress to meet constitutional defects in the previous statute.

10. That by the Act of March 4, 1938 (11 U. S. C. A. 203 (s)), Debtor's moratorium was extended to March 4, 1940, and thereafter was further extended to March 4, 1944.

ARGUMENT.

In the foregoing Summary, we have not attempted to meet Appellant's points, as stated, but take them up in the following Argument.

In the first place, we desire to direct this Court's attention to the cases of *Lowman v. Federal Land Bank*, No. 785 and *Moon v. Union Central Life Insurance Co.*, No. 854, both at the October Term, 1939. In each a Petition for Certiorari was denied, as of April 1, 1940 and April 29, 1940, respectively. The Respondent herein was also respondent in the last mentioned case and was in close contact with the Lowman petition. With the record and briefs of the Moon case before us and with a thorough knowledge of the same in the Lowman matter, we have experienced difficulty in distinguishing between the questions there involved and those upon which certiorari was granted in the instant case.

When Respondent returned to the District Court, invoked administration of the property therein it endeavored to observe and be governed exclusively and to follow strictly the terms of the Act and the decisions of this Court with regard to same. If it failed, or if the District Court departed from the ways of the statute, we are at a complete loss to identify the failure or departure which resulted in the present certiorari.

In his Supplemental Brief, Appellant-Petitioner assumes *first*, that the intentional provision for a sale at the request of the secured creditor defeats the primary purpose and intent of Congress in this legislation and *second*, that this Court is empowered to and should declare the sale provision void, giving effect, nevertheless, to the balance of paragraph (3) of sub-section (s).

In his Supplemental Brief (p. 11) Appellant further contends that under Paragraph 3 of subsection (s), after ascertaining the present value of the land, the Court is *required* to allow Debtor to redeem at said valuation and to turn the property over free of the mortgage debt. He does not question the method of valuation here adopted, i. e. evidence heard in open Court. Indeed, he could hardly raise such point as *his own valuation* was accepted by the Court and included in its Findings (Tr. 55). Further, on Pages 3 and 11 of his Supplemental Brief, Appellant concedes that the procedure adopted was strictly in accord with the terms of the Act. He can point to no provision of the statute giving him an absolute right to redeem at the appraised value and thus defeat the express powers of sale granted the Bankruptcy Court.

On the subject of the basis and reason for the sale ordered, Debtor utterly fails to recognize the several contingencies authorizing a sale in the Bankruptcy Court and ignores the Findings of that Court with regard thereto. It is his contention that the sale was ordered solely because of the creditor's request. From a factual standpoint, Appellant's contention is met by Findings 3, 5, 6, 23, 24, 25 and several others incident thereto, specifically made by the Bankruptcy Court (Tr. 54-56) and fully supported by the evidence appearing in the record.

The Act (Sub-sec. (s) Par. 3) not only provides for a sale in that Court upon written request of the secured creditor, but also provides that "If, however, the Debtor at any time *fails to comply with the provisions of this section, or with any orders of the Court made pursuant to this section, or is unable to refinance himself within three years,*" (italics ours) the Court may order the property sold, etc.

We are not here concerned with the right of a secured creditor to force a public sale upon written demand

prior to the expiration of the three year moratorium. That question is not involved in this case.

Amended sub-section (s) was enacted August 28, 1935 and Debtor's amended petition thereunder was filed on or about November 1, 1935. The order of sale herein appealed from was entered on February 11, 1939, *more than three years* after the filing of said amended petition. In the interim Debtor retained possession of the property, collected all the income therefrom, paid rent as and when he pleased (in violation of a definite court order), paid no taxes, no interest, nothing on principal, permitted the premises to become in disrepair, *never* made an offer of composition and demonstrated a complete inability of financial rehabilitation within or beyond the three year period. On the date of the order appealed from, Debtor's farm was manifestly within the admitted powers of the Bankruptcy Court to sell—irrespective of any written request or demand by the secured creditor.

The foregoing facts are established in specific Findings of Fact by the Bankruptcy Court, are supported by the record evidence and will not lightly be disregarded by this Court.

Rule 52 (a) Rules of Civil Procedure, U. S. Sup. Ct.

United Shoe Mach. Corp. v. U. S., 258 U. S. 451,
66 L. Ed. 708.

(And other authorities cited in Respondent's Brief in opposition to Petition for Certiorari.)

Consequently, not only did the Bankruptcy Court possess discretionary authority to order a sale for non-compliance by Debtor, but, the three year period having elapsed, the Court's duty to sell upon written request of the secured creditor (having a lien on the property) was clear and the Court had no alternative but to order a

sale. Under the express provision of the statute, Debtor then had "ninety days to redeem any property sold at such sale, by paying the amount for which any such property was sold," with five per cent interest. Let it be remembered that this Debtor made no offer or attempt to redeem per the terms of the statute. He did not even await the proposed sale, but appealed from the order of Court directing same.

This is not a case (as was *Borchard v. California Bank, etc., supra*) of a "disorderly and unauthorized procedure" having been followed by the parties. Here there was no failure to apply to the Bankruptcy Court for action in accordance with the statute. On the contrary, such action was applied for and had and the procedure which followed was wholly orderly and was fully authorized by the statute.

In this instance there was (1) written demand by the secured creditor for a sale, (2) failure of debtor to comply with the statute, (3) failure of debtor to comply with orders of Court made pursuant thereto and (4) utter inability to finance himself *after more than three years* from the filing of his petition under the amendment of August 28, 1935. All these elements were established by the evidence and specially found by the Bankruptcy Court. Consequently, even if the latter lacked authority to sell for any one reason, all the other reasons contemplated by and enumerated in the Act were present. It seems idle to question the authority of the Bankruptcy Court in the premises.

To a considerable extent, the foregoing discussion of record facts necessarily involves questions of law incident thereto. These facts present their own best answer. The questions of law, as such, injected by Appellant are stated above and require no repetition. In support of these contentions, Appellant cites:

Wright v. Union Central Life Ins. Co., 304 U. S. 502, 82 L. Ed. 1490.

John Hancock, etc. Co. v. Bartels, 308 U. S. 180,
84 L. Ed. 154.

Kalb v. Feuerstein, 308 U. S. 433, 84 L. Ed. 281.

Borchard v. California Bank & Trust Co.,
U. S., 84 L. Ed. 867.

At the outset we desire to register our complete disinclination to question the application of the above-mentioned decisions of this Court under the Frazier-Lemke Amendment *to the particular facts and record herein*.

In *Wright v. Union Central*, *supra*, this Court held that the property involved herein was subject to the exclusive jurisdiction of the Bankruptcy Court. That decision thereby became, was and is the law of this case. Without further question it was accepted by Respondent and the present review is occasioned by such acceptance and results wholly from the subsequent proceedings had in the Bankruptcy Court based thereon. Since the rendition of said decision by this Court, Respondent has not questioned and does not now question the controlling effect thereof. Let there be no misunderstanding on this phase.

In *John Hancock, etc., Co. v. Bartels*, *supra*, it appeared that the Wisconsin County Court attempted to confirm a sheriff's sale (confirmation being essential in that State) and to order the debtor dispossessed of the farm property while his petition was pending in the Bankruptcy Court under the Frazier-Lemke Act. This Court held that no stay order against the State Court proceedings was necessary, the same being automatically stayed by the filing and pendency of the debtor's petition in the Bankruptcy Court. We have never voiced or indicated any quarrel with this opinion and certainly do not do so now. However, it is obvious that same has no application in the instant case. The Debtor here does not seek to review *any State Court* action but only the administration of the farm land *in and by the Bankruptcy Court* as provided in the

statute. No attempt by a State Court to invade or supersede the exclusive jurisdiction of the Federal Court is here involved and the Kalb decision can be of no assistance herein.

Appellant's main reliance, as he says on page 6 of his Supplemental Brief, is *Borchard v. California Bank & Trust Co.*, U. S., 34 L. Ed. 867. Appellant asserts that that decision "sustains Debtor's position in this case and rejects the position of the Creditor and condemns the judgment rendered herein." He further states that under the holding therein the sale authorized by the Bankruptcy Court in this case was untimely and improper in that it was permitted "before the period of redemption had expired." We respectfully confess our inability to find support for such conclusion in any expression in the Borchard opinion. As we understand the latter, it does not differ, basically, from the Kalb or Bartels decisions. After the cause had progressed for many months in the Bankruptcy Court, the latter entered an order permitting the secured creditor to proceed by sale *in accordance with the terms of the trust deed, as provided by State statute*. This Court's characterization of the procedure adopted as "disorderly and unauthorized," entirely ignoring the available remedies provided by the Act, was obviously in order. The procedure followed in that case can hardly be compared with that in the instant case wherein the Bankruptcy Court was asked to and did order and control the sale and the complete administration of the farm property. This procedure prevailed immediately from and as a consequence the decision of this Court on the former appeal.

Incidentally, we confess surprise at Appellant's theory that a "period of redemption" can have its inception other than from and after the fact and the date of a sale. Certainly paragraph (3) affords no basis for a departure

from the accepted rule. The redemption there specified relates directly to the property "*sold at such sale.*" The redemption amount to be paid relates only to that for which the property "*was sold.*"

The Kalb case recognized the propriety of proceedings in the State Court, had with the consent of the Bankruptcy Court. The Borchard opinion clearly enunciated the principle that, as provided by the Act, if its procedure be followed, the conduct of the debtor may necessitate a sale. "Failure of the debtor to comply with any such orders of court may eventuate in a sale." (p. 870, 84 L. Ed. 867.)

The instant case involves no attempt to proceed in the State Court with or without the consent of the Bankruptcy Court and this Court is not called upon to determine the propriety of any such attempt. The Findings of the Bankruptcy Court (supported by all the evidence in the record) clearly demonstrate the eventuality of a sale because of debtor's failure to comply with the Act and with orders of Court entered pursuant thereto in due course of the procedure dictated by the statute, his demonstrated impossibility of financial rehabilitation within three years, to say nothing of the secured creditor's request for a sale, as provided in paragraph (3). Not only was there no inconsistency as against the Kalb and Borchard decisions but complete harmony therewith is apparent.

Congressional Intent.

Appellant's principal argument appears to be addressed to the question of "Congressional Intent" and the duty of this Court with respect thereto. His primary idea is that a debtor has an unqualified right to redeem his property at its determined value, fixed by appraisement or evidence heard in open Court and that this right cannot be

defeated by public sale, whether or not the creditor appears and bids in the property.

The original Frazier-Lemke Amendment was declared unconstitutional and void in *Louisville, etc., Bank v. Radford*, 295 U. S. 555, 79 L. Ed. 1593. Among the reasons for this holding was that it had been attempted, without due process of law, to deprive the mortgagee of a substantive property right, the right to realize upon his security by a judicial public sale. When the amendment of August 28, 1935 was enacted, it was expressly and intentionally sought to remedy this defect, among others. Consequently, the provisions of paragraph (3) of sub-section (s) were included in the Act. This was with and for the obvious intent and purpose of saving the constitutionality of the statute.

Beside permitting a public sale in the discretion of the Court for failure of the debtor to comply with the Act or court orders thereunder, it was provided that the secured creditor could, upon written demand, require a sale of the property if not satisfied to accept its then determined value in lieu thereof. This provision was noted and emphasized in *Wright v. Vinton, etc., Bank*, 300 U. S. 458, 81 L. Ed. 741, the purpose of its inclusion was stated and the expressions of the House and Senate Committees in support thereof were quoted.

If this Court should now construe the Act by "disregarding" or "casting out" (as Appellant suggests) such provision, it would be more than mere "interpretation"—it would constitute a holding that Congress could not and did not mean what it said deliberately and with avowed intention.

As stated in footnote 9 of the Vinton Branch opinion, "emphasis upon the deliberate intention to meet the constitutional objections" (raised in the Radford case) "dom-

inated the consideration of the bill in all stages. In other words, in the amended sub-section (s), the property is virtually in the complete custody and control of the Court, for all purposes of liquidation."

Sen. Rep. #985, 74th Cong., 1st Sess., p. 5.

79th Cong. Rec. 14332.

In the same category is Appellant's complaint that the right of the creditor (or anyone else) to bid more than the appraised value makes the sale a means of depriving debtor of his alleged right to redeem at the appraised value. In the Vinton Branch case it was also recognized by this Court, with references to the Congressional Debates (including statements by Senator Frazier and Representative Lemke, co-authors of the Act), that in the new Amendment the "*unqualified right*" of the secured creditors to bid at the sale was expressly preserved.

Wright v. Vinton Branch, etc., supra.

House Comm. on Jud., 79 Cong. Rec. 14332-3.

Sen. Comm. on Jud., S. 3002, Sec. 6, p. 9.

Sen. Rep. No. 985, 74th Cong., 1st Sess., pp. 4, 6.

Manifestly, Appellant's last mentioned objection must be read in the light of his objection to the authority to sell given the Bankruptcy Court by paragraph (3) of subsection (s). The power to sell involves the duty to obtain the best available price for the property sold. If, as asserted by Debtor, he has an unqualified right to re-acquire the land at its appraised value, not only are the express provisions for sale useless but, even if a sale were had the Court could sell only to the Debtor and only for the estimated then value—regardless of any higher amount offered at the sale. This would nullify the power to sell.

That no such absurd result was intended by Congress is established by the above references to the Congressional Record and is dictated by common sense. Further, para-

graph (3) gives the Debtor the right to redeem from an authorized sale "*by paying the amount for which any such property was sold,*" with 5 per cent interest. Why use this language if Debtor's construction is correct?

Appellant cites a number of authorities in connection with his contention that this Court is bound to disregard anything in the Act which might militate against the primary purpose thereof. Respondent does not question, in the abstract, the rules of construction voiced by these authorities. However, it respectfully submits that none of them supports Appellant's violent assumption that this Court has a right to legislate or to eliminate that which Congress has injected deliberately and for an express purpose. With this assumption we disagree.

Disregard by this Court of safe-guards deliberately provided would not only violate the Congressional intent and purpose but would also subject the present Act to one of the very defects by reason of which the original subsection (s) was declared unconstitutional in the *Radford* case. No citation of authority is necessary to support the established doctrine that, if possible, no interpretation will be adopted which will render a statute unconstitutional.

This is not the case of an ambiguous statute requiring interpretation and a search for Congressional intent to guide that interpretation. The powers and contingencies of sale are clearly stated in paragraph (3).

It is an established principle in this Court that:

"Where a law is expressed in plain and unambiguous terms, whether those terms are general or limited, the legislature should be intended to mean what they have plainly expressed, and consequently no room is left for construction."

United States v. Lexington Mill & E. Co., 232 U. S. 399, 58 L. Ed. 658.

In *Pirie v. Chicago T. & T. Co.*, 182 U. S. 438, 45 L. Ed. 1171, it was said that,

"When the purpose of a prior law is continued, usually its words are, and an omission of the words implies an omission of the purpose."

To this the Court added that words intentionally omitted are not to be put back in the law "by construction." The same must apply to judicial *exclusion* of words and provisions purposely *included* by the legislature.

If the provisions of which Appellant complains are to be measured by the question of "intent," the answer is clear. It was the intent of Congress to include powers and contingencies of public sale in the amended Act. The reasons therefor are equally clear. The purpose of Congress in enacting the entire Section 75, including subsection (s) is not defeated or impaired. Relief to distressed farmers was intended—it was and is effected. The right to retain possession of the farm, to work and live on it and to enjoy an undisturbed breathing spell of three years in which to get back on his feet are still afforded him. In no manner or degree do his statutory obligations or the provisions of paragraph 3 diminish his benefits under this legislation. On the basis of the *Radford* and *Vinton Branch* decisions, they are actually essential to his enjoyment of such benefits. Certainly they inflict no hardship.

Probably Appellant's most violent assumption is the assertion that Congress did not mean what it said and that to give effect to the Act and the primary purpose thereof this Court is bound to "cast out" safe-guards expressly provided by Congress.

Extension of Moratorium.

By the Act of March 4, 1938 (11 U. S. C. A. 203) (s) Congress extended the period to March 4, 1940 within which petitions for relief under Section 75 might be filed

by farmer-debtors. Just before the new period expired, it was again extended so that under the present statute such debtors may file petitions at any time prior to March 4, 1944.

Ever since those enactments Appellant has seriously contended and now contends that thereby his moratorium was extended and must now be observed without interruption until 1944. In addition to his self-made financial holiday of several years, Debtor has enjoyed a statutory moratorium continuously since the filing of his petition under amended subsection (s) on or about November 1, 1935. He now asserts that it has been extended another four years, a total statutory moratorium of nearly ten years.

There is nothing in either the enactments of 1938 or of 1940 to warrant the application of these extensions to petitions theretofore filed or to moratoria then in being. The recognized statutory moratorium period of three years is provided in Section 75(s)(2). Neither said amendment of 1938 or 1940 made any pretense of amending or affecting the designated period. It is still *three* years and *not ten*. We will not here discuss this point further as other observations with regard thereto are contained in our brief in opposition to the Petition for certiorari.

Res Adjudicata.

The second amendment to his answer filed by Debtor (Tr. 50-53) merely urged that the matters set up in Respondent's petition were (or should be considered) adjudicated by this Court on the former appeal (304 U. S. 502) and cannot be raised again. Rather than pass the point entirely without comment, we state briefly our reply to same.

The issues before the Court in the former appeal related almost wholly to the questions of whether or not, as ap-

plied to the case at bar, the Act was constitutional and whether, as against the proceedings had in the State Court, the Bankruptcy Court's jurisdiction was exclusive. At that time the land had not been administered in the Federal Court and the propriety thereof was not and could not be questioned.

The proceeding *now* on appeal is quite the reverse. There is no issue here as to the validity of the Act nor the jurisdiction of the Bankruptcy Court. Both were necessarily invoked by Respondent when it filed the petition asking that the terms of the statute be enforced and the property liquidated thereunder in the Bankruptcy Court.

Largely in connection with his contention in this behalf, Appellant claims that Respondent's averments and showing of the former's failure to make any offer of composition or extension attack the jurisdiction of the Federal Court. It is then urged that such failure is not jurisdictional and that in any event, Respondent has long since waived the point and is now estopped to raise it.

In reply we need only say that Respondent has never believed or contended that the offer required by the statute is an element of jurisdiction. However, when the Bankruptcy Court has acquired jurisdiction by reason of a petition duly filed, the debtor is bound to comply with the requirements of the Act (and orders of Court) to entitle him to the benefits thereof and to avoid a sale under the discretionary powers of the Court. One of these requirements is the making of an offer of composition and extension to his creditors.

In this case Debtor has never made an offer—good faith or otherwise. The evidence so shows and the Bankruptcy Court specifically so found (Finding #3). This was one of the several Findings upon which the Court entered the order of sale.

Conclusion.

We respectfully refer this Court to the Findings of Fact of the Bankruptcy Court (Tr. 54-56) as hereinbefore set out in full and the recitals in the opinion of the United States Circuit Court of Appeals (Tr. 153-7). We believe that same afford a clear and complete picture of the facts before the Bankruptcy Court and the propriety of the procedure therein.

This Brief is more extended than we desire and perhaps contains some repetition in the form of elaboration of certain points contained in our original brief opposing the Petition for Certiorari. However, the granting of the writ incites us to greater detail, as a matter of plain precaution. Also, we are not apprised of the basis of the Court's action, particularly having in mind the denial of writs in the *Lowman* and *Moon* cases wherein, we had thought, the basic issues were largely the same.

It is respectfully submitted that the judgment of the United States Circuit Court of Appeals for the Seventh Circuit be affirmed.

Respectfully submitted,

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JAN 9. 1941

CHARLES ELMORE CROPLEY
CLERK

Supreme Court of the United States

October Term, 1940 No. 51

JAMES M. WRIGHT,

Petitioner,

vs.

THE UNION CENTRAL LIFE INSURANCE COMPANY.

*On Writ of Certiorari to the United States Circuit Court of Appeals
for the Seventh Circuit.*

PETITION FOR A MODIFICATION OF THE OPINION.

[Delivered by Mr. Justice Douglas on December 9, 1940]

1. Although the reversal was correct, the reasons assigned therefor were erroneous, and should be withdrawn (p. 2).
2. The Opinion [but without mentioning the fact] overruled the constitutional decision in the *Radford* and *Vinton Branch* cases (pp. 3, 5-8).
3. Constitutionally, the mortgagee has the paramount right to a judicial public sale so as to assure that the mortgaged property shall be specifically devoted to the payment of the mortgaged debt (pp. 5-8).
4. Criticism of the Opinion (pp. 9-13).
5. Congressional intent refutes the Opinion's interpretation of § 75(s) (3) (pp. 13-16).

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Union Central Life Insurance Company (1) frankly concedes that the reversal was proper [although upon a ground not mentioned by this Court]; but (2) petitions that the **Opinion** be modified so as to *eliminate* its irrelevant holding [directly contrary to the *Radford* and *Vinton Branch* cases], that §75(s)(3) of the Frazier-Lemke Act (as amended) (i) permits the mortgagor—against the wishes of the mortgagee—to secure a clear title upon the payment of an appraised or fixed valuation; and (ii) denies to the mortgagee the right to have the mortgaged property specifically applied to the mortgage debt through a judicial sale.

I. Reason why the Reversal was entirely correct.

Union Central *frankly concedes* that the judgments of the District Court, and of the C. C. A. ordering a sale of the mortgaged property *were erroneous* (R. 57, 157); and that (i) they *ought* to have been reversed; (ii) they were *correctly* reversed; and (iii) they might properly have been *even more extensively reversed*, rather than merely *modi-*

fied—all because Union Central had prayed for, and *erroneously obtained*, a judgment below for the judicial sale of the mortgaged property, *before* the necessary statutory conditions precedent had been complied with [§ 75(s) (1)(2)(3) R. 24(6)].¹

¹ Those conditions precedent [which must be complied with *before* a mortgagee is justly entitled to a judicial sale under § 75(s)(3)] are as follows:

(a) The appraisers shall appraise the property “at its then fair and reasonable market value” (s). **This was not done;**

(b) The Referee shall order possession to remain in the debtor [(s)(1)]. **This was not done;**

(c) After the foregoing provisions have been complied with [which was not done], “the court shall stay all judicial or official proceedings . . . against the debtor or any of his property *for a period of three years*” [(s)(2)]. **This was not done.**

(d) During such three years, the debtor shall be permitted to retain possession of his property [(s)(2)]. The debtor [Mr. Wright] was never accorded such three years *statutory* possession; and [as aptly indicated on the first page of the Opinion by DOUGLAS, J.] the three years stay never started to run. **The three years statutory delay was never accorded to Mr. Wright.**

(e) At the end of such three year statutory possession, the court may cause a re-appraisal of the property or “fix the value of the property” [(s)(3)]. **That was never done.**

The District Court never did “fix the value of the property”, *after* compliance with the requirements of (s)(3), to wit: at the end of three years (or prior thereto in the event the debtor attempted to pay into court the amount of the original appraisal of the property). Consequently, the District Court’s action in fixing the value of the property at \$6000, *did not validly* “fix the value of the property” as required by (s)(3); but it was the District Court’s voluntary action entirely outside of (s); and such action did not give any statutory validity to that valuation (R 55, ¶ 14).

For the reasons stated in footnote ¹, this Court *properly reversed* the judgments below; and it should have remanded this case for further proceedings to be taken in accordance with the plain requirements of the Frazier-Lemke Act.

However, the *specific reasons* which the **Opinion** gave for the reversal *were erroneous*, and should be withdrawn.

II. The reasons why the Opinion should be modified, so as not to overrule the Radford and Vinton Branch cases.

Union Central petitions (i) for a modification of so much of the **Opinion**² as attempts to construe (and to reconcile) the two *provisos* in § 75(s)(3);—for the reason that no such question was properly before this Court; and (ii) for a modification of so much of the **Opinion** as says that the mortgagor is entitled (against the mortgagee's wishes) to purchase, or to redeem, the mortgaged property at some appraised value (or at some value fixed by the court);—for the reason that this Court has heretofore decided that Congress cannot *constitutionally* deprive the mortgagee of his paramount right to have a judicial sale, at which he may bid upon the mortgaged property up to such amount as he chooses to offer.

This point was never raised in the Briefs, or at the oral argument, or in the **Opinion**.

The grounds for this Petition for Modification are:

First: Without any consideration whatever, the **Opinion** erroneously overruled two prior decisions, to wit; (1) *Louisville Bank v. Radford*, 295 U. S. 555, without the slightest reference to it; and (2) *Wright v. Vinton Branch*,

² It will be designated throughout as **Opinion**.

300 U. S. 440, with only the scantiest—and at that *erroneous*—reference to it.

The **Opinion** should not be allowed *silently to overrule* an important question of constitutional law which was involved, argued, and specifically decided, in the *Radford* and *Vinton Branch* cases—at least without some consideration of the subject so as to show that this Court appreciated that it was changing its position on such an important question of constitutional law under the Fifth Amendment.

Second: The **Opinion** considers sub-section (s)(3) as if the only question involved were one of *mere statutory interpretation*, unembarrassed by any *constitutional* considerations or by any prior decisions of this Court. If that were all that was involved, the **Opinion's** reasoning is most persuasive, and is probably very sound.

The trouble is that, in the *Radford* and *Vinton-Branch* cases, this Court has already imposed a *definite constitutional limitation* upon the power of Congress to do the precise thing which the present **Opinion** simply *assumes* (a) is wholly free from all constitutional limitations, and (b) only need be considered as a matter of *statutory interpretation*.

The present **Opinion** completely overlooked the fact that this Court has decided that a mortgagee is entitled, as a matter of constitutional right, to have the specific property devoted to the payment of his debt, by a judicial sale at which he may freely bid whatever amount he chooses to offer for the mortgaged property; and that a deprivation of that right violates the Fifth Amendment (*Radford* case, 295 U. S. at pp. 579-582, 584; 589, 590, 594-5, 602; *Vinton-Branch* case, 300 U. S. pp. 457, 459, note 4, 468).

Overlooking—or at least not commenting upon—those vital constitutional considerations, the **Opinion** considers the two *Provisos* in sub-section (s)(3) merely as two inconsistent *Provisos* which must be reconciled; and, on that

basis, the reconciliation is, as we have already stated, quite persuasive, and doubtless entirely sound.

This, however, brings us to the critical point, viz.: those two *Provisos* cannot be construed merely as an original proposition of *statutory interpretation*; but they must be construed in the light of the *Radford* and *Vinton-Branch* decisions that, constitutionally, Congress cannot deprive the mortgagee of his paramount right to have the specific mortgaged property devoted to the satisfaction of his debt through a public judicial sale.

Third: The *Radford* and *Vinton Branch* cases held (a) that § 75(s) of the *original* Frazier-Lemke Act was void; but, (b) that the 1935 *amended* (s) was valid, because, while the original (s) had *deprived* the mortgagee of, the amended (s) had fully *preserved* to the mortgagee, five fundamental property rights (295 U. S. at pp. 594-5; 300 U. S. at pp. 457-468) to-wit:

(1) Mortgagee's "right to retain the lien until the indebtedness thereby secured is paid";

(2) Mortgagee's "right to realize upon the security by a judicial public sale";

(3) Mortgagee's "right to determine when such sale shall be held, subject only to the discretion of the Court";

(4) Mortgagee's "right to protect its interest in the property by bidding at such sale whenever held, and thus to assure having the mortgaged property devoted primarily to the satisfaction of his debt, either through [a] receipt of the proceeds of a fair competitive sale, or [b] by taking the property itself";

(5) Mortgagee's "right to control meanwhile the property during the period of default, subject to the

discretion of the Court, and to have the rents and profits collected by a receiver for the satisfaction of the debt."

Without any discussion of the subject whatever, the present **Opinion** now construes sub-section (s) so as to **deprive the mortgagee of the first four of those fundamental property rights** which had been constitutionally established in the *Radford* and *Vinton Branch* cases, to-wit:

(1) Union Central is *not allowed* "to retain the lien [on the farm] until the indebtedness thereby secured is paid"; but it *must surrender* its lien entirely; if Mr. Wright chooses to pay the value fixed by the Court;

(2) Union Central is *not allowed* "to realize upon the security by a judicial public sale"; but it is *required to accept* whatever the Court may fix as the value, without such value being determined by a judicial public sale;

(3) Union Central is *given no right* "to determine when such judicial public sale shall be held"; because *no sale* is to be held at any time.

(4) Union Central is *denied the right* "to protect its interest by bidding at such [judicial public] sale" so as "to assure having the mortgaged property devoted primarily to the satisfaction of its debt" through "a fair competitive sale, or by taking the property itself."

In the *Radford* case, the great constitutional question there decided, and then re-affirmed in the *Vinton Branch* case, was that Congress **could not compel the mortgagee to accept some appraised value of the property less than the debt**,—because that would take away his common law right to have the *mortgaged property itself* devoted to the payment of the mortgage debt [either through receiving the proceeds of a fair competitive sale, or by taking over the property itself.]

In the *Radford* case, the Louisville Bank's BRIEF, page 25, thus asserted that fundamental constitutional right.³

This Court adopted the Louisville Bank's contention as sound, in the following language of Mr. Justice BRANDEIS (295 U. S. at 579, 580, 584, 589, 590, with a wealth of authorities cited):

"No instance has been found, except under the Frazier-Lemke Act; of either a statute or decision compelling the mortgagee to relinquish the property to the mortgagor free of the lien unless the debt was paid in full.

This right of the mortgagee to insist upon full payment before giving up his security has been deemed of

³ The Brief asserted:

A.

"THE FUNDAMENTAL LAW VESTS IN A MORTGAGE THE RIGHT TO HAVE THE MORTGAGED PROPERTY DEVOTED EXCLUSIVELY TO THE SATISFACTION OF THE MORTGAGE DEBT.

It has always been the fundamental law in this country that a mortgagee had the right to receive the full proceeds (up to the amount of his debt) of a sale of the mortgaged property. At the sale the mortgagee could protect himself by bidding in the property. In other words, the very essence of a mortgage was the right of the mortgagee to have the property devoted to the satisfaction of his debt.

Until the passage of the Frazier-Lemke Act, no court or legislative body had ever provided that the debtor might keep the property for himself, while forcing the mortgagee to accept an amount less than his debt—an amount not determined by a sale of the property at which the general public, including the mortgagee, had the opportunity to bid.

For hundreds of years the laws of England and America have guaranteed to a mortgage creditor the exclusive right to have the full value of the mortgaged property applied towards the payment of his debt.

This is so because the "fundamental law" on the subject has always been, until the passage of the Frazier-Lemke Act, that the creditor was entitled to have the thing pledged devoted to the payment of his debt and that the right of the debtor to retain title to the property pledged, was subject to the paramount right of the creditor to have the property sold and the proceeds applied towards the payment of the creditor's claim."

the essence of a mortgage To protect his right to full payment on the mortgaged property, the mortgagee was allowed to bid at the judicial sale on foreclosure No court appears ever to have authorized a sale at a price less than that which the lien creditor offered to pay for the property in cash The Frazier-Lemke Act is the first instance of an attempt, by a bankruptcy act, to abridge, solely in the interest of the mortgagor, a substantive right of the mortgagee in specific property held as security It [the effect of the Act] is the taking of substantive rights in specific property acquired by the Bank prior to the Act."

In the *Vinton-Branch* case [through references to Congressional Committee reports and explanations], this Court re-emphasized that the amended sub-section (s) *plainly intended* that the mortgagee should still have the right to protect his lien interest on the property by having a judicial sale and by being permitted to bid at such sale when held (300 U. S. at p. 459, note 4).

Nothing decided since even refers to or in any wise modifies this fundamental right of the mortgagee, constitutionally established in the *Radford* and *Vinton-Branch* cases.⁴

⁴ The *Union Central* case (304 U. S. 502) related to the application of the amended Frazier-Lemke Act to a foreclosure suit in a State Court where the right of redemption had not expired.

The *Bartels* case (308 U. S. 180), merely decided that the benefits of the Frazier-Lemke Act as amended would not be denied to a farmer on the ground that there was no reasonable probability of his rehabilitation, or that he did not act in good faith or that his equity in the property was not worth the mortgage debt.

Kalb v. Feuerstein (308 U. S. 433) involved nothing but the effect of the Frazier-Lemke Act, as amended, upon the jurisdiction of a State court foreclosure.

The *Borchard* case (310 U. S. 311) decided that the mortgagee was not entitled to have a sale until the mortgagor had first received the benefit of the three years' possession (from the date of the order giving him such possession) provided for in the Frazier-Lemke Act as amended.

Criticism of the Opinion.

The **Opinion** should be re-cast and greatly modified, because it *erroneously* asserts that, *constitutionally*, under §75(s)(3),

(a) The mortgagor is entitled to acquire the mortgaged property, and to take it free of lien, upon the payment of **some value fixed by appraisement or by the court**; and

(b) The mortgagee has no constitutional claim to anything *more* than such value as fixed by appraisement or by the court; and cannot insist upon his right to a public judicial sale at which he may bid what he pleases in order to have the mortgaged property specifically applied to the payment of his secured debt.

The **Opinion** ignores what was actually decided in the *Radford* and *Vinton Branch* cases. It states, over and over again, in one form or another (1) that a mortgagee has no constitutional right to have the mortgaged property specifically devoted to the payment of the debt by a judicial sale at which he can bid what he pleases on it; and (2) that, *constitutionally*, a mortgagee is only entitled to receive "the value of the property" **as fixed by an appraisement or by a court**.

We will give some characteristic quotations from the **Opinion** with our running comment thereon.

The **Opinion** says (p. 4):

"Safeguards were provided to protect the rights of secured creditors, throughout the proceedings, to the extent of the value of the property. *John Hancock Mutual Life Ins. Co. v. Bartels, supra*, at pp. 186-187; *Borchard v. California Bank, supra*, at p. 317. There is no constitutional claim of the creditor to more than that."

Comment: That is erroneous. The secured creditor (mortgagee) has a constitutional claim to receive more than the value of the property as fixed by some appraiser or by some court. He is entitled to have the *property itself* devoted to the payment of his debt. It was the failure of the original Frazier-Lemke Act to preserve that right, and its attempt to deprive the mortgagee of his fundamental property right in that respect (as elaborately shown by Mr. Justice BRANDEIS in the *Radford* case, 295 U. S. at pp. 578-580, 588-591, 594, 601) which made the original sub-section (s) unconstitutional. (See pp. 5⁸-8, *supra*.)

Without stopping to point out (1) that the cited passage from the *Borchard* case "begs the question" as to what constitutes the constitutional "value of the property"; (2) that the cited passage from the *Bartels* case, not only does not support the **Opinion**, but plainly indicates that the mortgagee is entitled to a public sale and to bid thereon as much as he pleases (to the full value of his debt and interest or more); and (3) that the mortgagor merely has the usual right to redeem within a limited time at such *sale price*,—it is enough to observe that those cases do not in the remotest degree support the proposition that the "constitutional claim of the creditor" is limited to some appraised or fixed value of the property.

Again, the **Opinion** says (p. 4):

"And the creditor will not be deprived of the assurance that the value of the property would be devoted to the payment of its claim. For, as indicated in *Wright v. Vinton Branch*, 300 U. S. 440, 468, if the debtor did redeem pursuant to that procedure, he would not get the property at less than its actual value."

Comment: That is fallacious; and, in its context, is incorrect, because (a) it assumes that the creditor is only

entitled to receive the "value of the property" as fixed by an appraiser or by the court; (b) it forgets that this Court has already decided in the *Radford* and *Vinton Branch* cases that the creditor is *not* limited to "the value of the property" as *somebody else may decide it is worth*, but is *constitutionally entitled* to have the mortgaged property itself specifically devoted to the payment of the debt through a public judicial sale; (c) a debtor's redemption of the property at a value fixed by an appraiser *might well result* in the debtor getting the property "at less than its actual value", the best test of which value is offered by a public sale; and (d) the *Vinton Branch* case does not merely indicate what the **Opinion** says, but it indicates very much more than that, as the following black type sentence shows (300 U. S. at p. 468):

"But it must be *assumed* that the mortgagor will *not* get the property for less than its actual value. **The Act provides that upon the creditor's request the property must be re-appraised, or sold at public auction; and the mortgagee may by bidding at such sale fully protect his interest.**"

The **Opinion** bluntly asserts (pp. 4, 5) that the mortgagor has an "express and fundamental statutory right to redeem at the reappraised value or at the value fixed by the Court"; That the mortgagee's right to a judicial sale must be "deferred or postponed" until the ~~mortgagee~~ ^{mortgagor} has had an opportunity to exercise that "fundamental statutory right to redeem" at a fixed value, in which event the mortgagee "is paid the full amount of what he can constitutionally claim."

That is not the law.

Comment: While, if standing alone, such might be a literal and proper reconciliation of the two *Provisos*, the **Opinion** overlooks that, if the Act be so construed, then it

is *invalid* because in direct conflict with the *Radford* and *Vinton Branch* cases.

The **Opinion** further asserts that the mortgagor has the absolute right

"to have the property reappraised or the value fixed at a hearing" (p. 6);

and

"he was then entitled . . . to redeem at that value; and that if he did so redeem, the land should be turned over to him free and clear of encumbrances and his discharge granted" (p. 6);

and that the Court has no discretion

"to deny or to grant the debtor's right to redeem at the reappraised value or at the value fixed by the Court" (p. 5);

because Congress has itself absolutely determined that subject.

That is not constitutionally correct.

Comment: The exact contrary was decided in the *Radford* and *Vinton Branch* cases.

5 If there is any one thing which those cases decided it was that the mortgagor-debtor **did not have the right** to acquire the mortgaged premises **at some redemption value fixed by an appraiser or by the Court**; but that the mortgagee had the right to have a judicial public sale of the mortgaged property at which he could competitively bid upon it, and buy it in, if he pleased; and that the debtor's right was limited to a *subsequent* redemption (within a limited time) at the value of the property **as determined by such judicial sale.**

We have not overlooked that the *Vinton Branch* case, in expounding the *Radford* decision, listed the five fundamental property rights, and then said (300 U. S. at 457):

"It was not held [in the *Radford* case] that the deprivation of *any one* of these rights would have rendered the Act invalid, but that the effect of the statute in its entirety was to deprive the mortgagee of his property without due process of law."

But as shown above, the **Opinion's** construction of sub-section (s) deprives the mortgagee not of "*any one* of these rights" but **deprives him of four out of the five enumerated rights**, to-wit, (1) the *retention* of the lien until the debt is paid, (2) the right to a *judicial public sale*, (3) the right to determine *when* the sale should be had, and (4) the right to *bid the property in* so as to assure its specific devotion to payment on the mortgage debt (pp. 5-6, *supra*).

Fourth: The Congressional Committee Reports, and the Debates in the Committee and before the House, demonstrate (1) that the **Opinion's** construction of amended sub-section (s) is erroneous; and (2) that Congress intended to preserve inviolate the mortgagee's paramount right to a public judicial sale—because Congress was afraid that, otherwise, even the amended section (s) would be declared unconstitutional [just as the original (s) had been declared void in the *Radford* case].

(1) In the *Vinton Branch* case (300 U. S. at p. 459, note 4) this Court expressly stated that it accepted that view of sub-section (s)(3) saying:

"The new Act does not in terms provide for "The right to protect its [the mortgagee's] interest in the property by bidding at such sale whenever held . . ." But the committee reports and the explanations given in Congress make it plain that the mortgagee was intended to have this right. **We accept this view of the statute.**"

In a footnote to that quotation, this Court emphasized that, after the *Radford* decision, Congress deliberately *refused to limit* the mortgagee's bid at a judicial sale to either any "appraised value", or even to the "original principal" debt, lest otherwise the amended Act might be unconstitutional; and that the Senate "had no intention of raising a further constitutional controversy by questioning the mortgagee's unqualified right to bid" (300 U. S. at p. 459).

That alone ought to be sufficient to establish that, in adopting the *amended* sub-section (s), Congress *intended to preserve* the mortgagee's paramount right to have a public judicial sale, with the unlimited right to bid thereon up to any price the mortgagee chose to give.

This demonstrates that the **Opinion's** "reconciliation" of the two supposed inconsistent *Provisos* was based on an *erroneous approach* to the subject. It should have been approached, not from the standpoint of trying to reconcile the two *Provisos*, but from the standpoint of (a) the *constitutional limitations* on Congress, and (b) Congress' *intention* to conform to such limitations—a subject not even touched upon in the **Opinion**.

(2) For completeness of discussion as to the Congressional *intent* regarding § 75(s)(3), a brief legislative history will be useful.

(a) After the *Radford* decision, Senator Frazier introduced an amendment to the Frazier-Lemke Act so as to limit the mortgagee's lien "to the actual value of such property, as fixed by the appraisals provided for in this section," which provided that upon payment of the appraised value, the court should "turn over full possession and title of said property" to the mortgagor—thus completely destroying the mortgagee's right of sale. (S. B. 3002; 74th Cong. 1st Sess.)

The Senate *rejected* that amendment; and provided that the Court might order a public judicial sale, but limited the mortgagee's bid to an amount not in excess "of the appraised value or the original principal, whichever is the highest". (300 U. S. p. 459, note 4.)

(b) In order "to remove a question as to the constitutionality of the bill" the House made a public judicial sale *mandatory*; and gave to the mortgagee-creditor,

"the right, as a matter of right, to have a foreclosure of the property in the event his debt has not been paid in full",

so that the mortgagee-creditor might

"pursue the property by which the debt is secured. He can have it sold, under the terms of this amendment to the *highest bidder*; he may himself bid and he gets for himself whatever the property brings." (79 Cong. Record pp. 14332-4.)

(c) When the amended Frazier-Lemke Act was about to expire, Senator Frazier offered a bill to extend its life, and again included a provision to deprive the mortgagee of a right to a public sale [S B 1935, 76th Cong. 1st Sess.]. The Senate Judiciary Committee stated that the 1935 amended sub-section (s) had "provided for a public sale, in case the mortgagee was not satisfied with the appraisal, the re-appraisal, or the determination of the value of the property by the court upon evidence"; but it then argued at length that the mortgagee ought not to have any such right to a public sale, but should be satisfied with the *mere value of the property*; and the Senate passed the bill in accordance with that view. [Senate Report No. 1045 p. 4, to accompany S 1935, 76th Cong. 1st Sess.]

In the House, Mr. Lemke supported the Senate Bill on the ground that such an appraisal was preferable to "a

public sale". [Hearings on H R 7523 and S 1935, Serial 14, pp. 15, 16; 76th Cong. 3rd Sess. Jan. 29, 1940.]

The House Committee on Judiciary *rejected* Mr. Lemke's arguments, and refused to concur in the Senate amendment taking away the mortgagee's absolute and paramount right to a public sale, saying, [House Report 1658, p. 2, to accompany S 1935 Feb. 21, 1940, 76th Cong. 3rd Sess.]:

"The Committee considered the proposal that the act be amended so as to withdraw from a mortgagee coming within the provisions of the law the right to protect its (the mortgagee's) interest in the property by bidding at the sale of such property at public auction, whenever held. Aside from any question of policy, in the opinion of the committee there is grave doubt as to the constitutionality of such an amendment (*Wright v. Vinton Branch Bank*, 300 U. S. 440; *Louisville Joint Stock Land Bank v. Radford*, 295 U. S. 555; *John Hancock Mutual Life Insurance Company v. Bartels*, decided U. S. Sup. Ct. Dec. 4, 1939). It has concluded that it should not recommend that the act be so amended.

Thereupon the Bill (the Senate and House concurring) passed as a *mere extension* of the existing amended sub-section (s), and without the proposed limitation on the recognized right of the mortgagee to have a judicial public sale, as decided in the *Radford* and *Vinton-Branch* cases.

(d) This brief review shows that Congress, both in 1935 [when adopting the amended sub-section (s) to conform to the *Radford* decision], and again in 1940 [in *extending the life* of that same amended sub-section (s)] **deliberately refused to abridge** the mortgagee's unqualified right to a judicial public sale; recognized that such right existed; and that any limitation thereon would endanger the constitutionality of the Act itself. [See Act March 4, 1940 (No. 423, 76th Cong. 3d Sess. c. 39.)]

Conclusion.

We are very reluctant to ask this Court to reconsider an **Opinion**, to which it has already devoted time and labor; but, on account of the importance of the constitutional question involved regarding the property rights of a secured creditor, the foregoing Petition for Modification is submitted, in the hope that the Court will see that it approached the question from an entirely erroneous standpoint, due to the failure of counsel on both sides to direct the Court's attention to the constitutional question involved.

The Congressional intent alone, as shown at pages 13-16, *supra*, ought to be enough to demonstrate (regardless of the constitutional question involved) that there is *no inconsistency* between the two *Provisos*; that Congress saw no inconsistency; and that the true construction is that the *Proviso* for a mortgagee's judicial public sale is paramount.

WM. MARSHALL BULLITT,
*Counsel for Union Central Life
Insurance Company.*

ARTHUR S. LYTTON,
VIRGIL D. PARISH,
Of Counsel.

January 8, 1941.

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SUPREME COURT OF THE UNITED STATES.

No. 51.—OCTOBER TERM, 1940.

James M. Wright, Petitioner,
vs.
The Union Central Life Insurance
Company, et al.

On Writ of Certiorari to
the United States Circuit
Court of Appeals for the
Seventh Circuit.

[December 9, 1940.]

Mr. Justice DOUGLAS delivered the opinion of the Court.

This case involves the same debtor and the same 200 acre tract of land as were involved in *Wright v. Union Central Life Ins. Co.*, 304 U. S. 502. As revealed in that case, the debtor is a farmer who filed a petition under § 75 of the Bankruptcy Act and later amended it under § 75(s), asking to be adjudged a bankrupt.¹ This Court held that the 200 acre tract was subject to the jurisdiction of the bankruptcy court and that § 75(n) extending the period of redemption was constitutional. The present record does not disclose all that has transpired in this proceeding. For example, it does not appear whether the debtor asked for an appraisal under § 75(s) which it is the duty of the court to make on such request and in which event the three-year stay provided for in § 75(s) (2) may start to run only after such appraisal has been made. *John Hancock Mutual Life Ins. Co. v. Bartels*, 308 U. S. 180; *Borchard v. California Bank*, 310 U. S. 311. But such problem is not sharply presented by the record before us. The narrow issue presented by this petition for certiorari and which moved us to grant it is whether under § 75(s) (3) the debtor must be accorded an opportunity, on his request, to redeem the property at the reappraised value or at a value fixed by the court before the court may order a public sale.

¹ Act of March 3, 1933, c. 204, 47 Stat. 1467, 1470; Act of June 28, 1934, c. 869, 48 Stat. 1289; Act of August 28, 1935, c. 792, 49 Stat. 942, 943. The petition was amended October 11, 1935, as authorized by § 75(s) as enacted by the Act of August 28, 1935. Sec. 75 has been further amended by the Acts of March 4, 1938, and June 22, 1938, 52 Stat. 84, 85, 939, and by the Act of March 4, 1940 (No. 423, 76th Cong., 3d Sess., c. 39), but in respects not material here. Sec. 75, as now in force, appears in 11 U. S. C. § 203.

2 *Wright vs. The Union Central Life Insurance Co. et al.*

On July 22, 1938, respondent filed a petition praying that the proceeding be dismissed or, in the alternative, that an immediate sale be had, and alleging, *inter alia*, that the debtor's financial condition was beyond all reasonable hope of rehabilitation, that he had failed to comply with the order of the court requiring two-fifths of the crops to be delivered to the trustee, that he had made no offer of composition, and that he had failed to pay taxes and insurance and had made no payment on principal since 1925 and none on interest since 1930. The debtor's motion to dismiss the petition was denied. On October 5, 1938, the debtor filed both an answer to the petition, and a cross petition under § 75(s) (3) to have the land appraised or a date set for hearing and after hearing evidence to have its value fixed, to be allowed to redeem at that value, and to be discharged from liability on account of any deficiency. Respondent answered alleging that the debtor was not entitled to redeem at such value and that by the terms of § 75(s) (3) its request for a sale took precedence over any such right of the debtor. The court held a hearing at which evidence was adduced. It found, *inter alia*, that the amount owed by the debtor to respondent was \$15,903.63, that the value of the property was \$6,000, that there was no evidence upon which might be based a reasonable hope or expectation of the debtor's financial rehabilitation, that there was no evidence of his ability to effect a refinancing of the property at that value, and that he had failed and refused to obey orders of the court. Accordingly it ordered that the property be sold "at public sale to the highest bidder and for cash, without any relief whatever from valuation and appraisement laws"; that respondent be allowed to purchase at the sale and to "utilize and be given credit for all or any part of the indebtedness of [the] debtor"; and that the debtor be barred from all equity of redemption in the property if it be not redeemed by him "within the time and in the manner allowed and provided" by § 75(s) (3).² On appeal to the Circuit Court of Appeals that order was affirmed, (108 F. (2d) 361), the court stating that the facts not only authorized the entry of the order but made such action imperative. We granted certiorari because of the importance of the problem to the orderly administration of the Act.

² Sec. 75(s) (3) grants the debtor ninety days to redeem any property sold at a public sale, by paying the amount for which it was sold, together with 5% interest, into court.

We think that the denial of an opportunity for the debtor to redeem at the value fixed by the court before ordering a public sale was ~~reversible~~ error.

The provision in § 75(s) (3) that at the end of three years, or prior thereto, the debtor may pay into court the amount of the appraisal of the property, is followed by two *provisos*.³ The first states that "upon request of any secured or unsecured creditor, or upon request of the debtor, the court shall cause a reappraisal of the debtor's property, or in its discretion set a date for hearing, and after such hearing, fix the value of the property, . . . and the debtor shall then pay the value so arrived at into court" The second provides that "upon request in writing by any secured creditor or creditors, the court shall order the property upon which such secured creditors have a lien to be sold at public auction."

True, the granting of a request for a public sale is mandatory. But so is the granting of a request for a valuation at which the debtor may redeem. Yet a reconciliation of these seemingly inconsistent remedies is not difficult if the purpose and function of the Act are not obscured. This Act provided a procedure to effectuate a broad program of rehabilitation of distressed farmers faced with the disaster of forced sales and an oppressive burden of debt. *Wright v. Union Central Life Ins. Co., supra; John Hancock*

³ Sec. 75(s) (3) reads as follows:

"At the end of three years, or prior thereto, the debtor may pay into court the amount of the appraisal of the property of which he retains possession, including the amount of encumbrances on his exemptions, up to the amount of the appraisal, less the amount paid on principal: *Provided*, That upon request of any secured or unsecured creditor, or upon request of the debtor, the court shall cause a reappraisal of the debtor's property, or in its discretion set a date for hearing, and after such hearing, fix the value of the property, in accordance with the evidence submitted; and the debtor shall then pay the value so arrived at into court, less payments made on the principal, for distribution to all secured and unsecured creditors, as their interests may appear, and thereupon the court shall, by an order, turn over full possession and title of said property, free and clear of encumbrances to the debtor: *Provided*, That upon request in writing by any secured creditor or creditors, the court shall order the property upon which such secured creditors have a lien to be sold at public auction. The debtor shall have ninety days to redeem any property sold at such sale, by paying the amount for which any such property was sold, together with 5 per centum per annum interest, into court, and he may apply for his discharge, as provided for by this Act. If, however, the debtor at any time fails to comply with the provisions of this section, or with any orders of the court made pursuant to this section, or is unable to refinance himself within three years, the court may order the appointment of a trustee, and order the property sold or otherwise disposed of as provided for in this Act."

4 *Wright vs. The Union Central Life Insurance Co. et al.*

Mutual Life Ins. Co. v. Bartels, supra; Kalb v. Feuerstein, 308 U. S. 433. Safeguards were provided to protect the rights of secured creditors, throughout the proceedings, to the extent of the value of the property. *John Hancock Mutual Life Ins. Co. v. Bartels, supra*, at pp. 186-187; *Borchard v. California Bank, supra*, at p. 317. There is no constitutional claim of the creditor to more than that. And so long as that right is protected the creditor certainly is in no position to insist that doubts or ambiguities in the Act be resolved in its favor and against the debtor. Rather, the Act must be liberally construed to give the debtor the full measure of the relief afforded by Congress (*John Hancock Mutual Life Ins. Co. v. Bartels, supra; Kalb v. Feuerstein, supra*), lest its benefits be frittered away by narrow formalistic interpretations which disregard the spirit and the letter of the Act.

Equal protection to debtor and creditor alike can be afforded only by holding that the debtor's request for redemption pursuant to the procedure prescribed in the first proviso of § 75(s) (3) cannot be defeated by a request of a secured creditor for a public sale under the second proviso. Certainly equal protection of debtor and creditor would not be obtained if the contrary view were followed. Then the debtor's rights under the first proviso would be either dependent on the outcome of his race of diligence with a creditor, for which customarily he would be poorly equipped (Cf. *Kalb v. Feuerstein, supra*); or they would be defeasible at the instance of a creditor. Under our construction, however, the debtor will be given the benefit of an express mandate of the Act. And the creditor will not be deprived of the assurance that the value of the property ~~would~~ be devoted to the payment of its claim. For, as indicated in *Wright v. Vinton Branch*, 300 U. S. 440, 468, if the debtor did redeem pursuant to that procedure, he would not get the property at less than its actual value. In that case this Court, in sustaining the constitutionality of § 75(s), emphasized that the Act preserved the right of the mortgagee to realize upon the security by a judicial sale. By our construction the exercise of this right is merely deferred or postponed until the other conditions and requirements of the Act, prescribed for the protection of the debtor, have been met. It is eventually denied the creditor only in case he is paid the full amount of what he can constitutionally claim.

will

Respondent, however, places great reliance on that part of § 75 (s)(3) which provides that if the debtor "at any time fails to comply with the provisions of this section, or with any orders of the court made pursuant to this section, or is unable to refinance himself within three years, the court may order the appointment of a trustee, and order the property sold or otherwise disposed of as provided for in this Act." This provision is somewhat ambiguous. And no significant light is thrown on its meaning by the Committee Reports.⁴ To be sure it was relied on by this Court in *Wright v. Vinton Branch*, *supra*, pp. 460-462, for the conclusion that the three-year stay provided for in § 75(s)(2) is not an "absolute one" but that "the court may terminate the stay and order a sale earlier." (p. 461.) But there is nothing in that opinion or in the Act which says that that power of the court may be utilized so as to wipe out the clear and express right of the debtor under § 75 (s)(3) to redeem at the reappraised value or at the value fixed by the court. Nor can the existence of that power be fairly implied. The power of the court to "order the property sold or otherwise disposed of as provided for in this Act" cannot be taken to mean a discretionary power to terminate the proceedings through the exclusive device of a public sale. Congress has provided that certain contumacious conduct on the part of the debtor or his inability to refinance himself within three years may be an appropriate basis for a termination of the proceedings or for an acceleration thereof. We cannot infer, however, that Congress intended that such facts should have any further legal significance under the Act. To hold that they empowered the court to deprive the debtor of his express and fundamental statutory right to redeem at the reappraised value or at the value fixed by the court would be to imply a power of forfeiture wholly incompatible with the broad design of the Act to aid and protect farmer-debtors who were victims of the general economic depression. *Wright v. Vinton Branch*, *supra*, p. 466. Such an important remedial right cannot be lost by mere implication. And to hold that the court has the discretion to deny or to grant the debtor's right to redeem at the reappraised value or at the value fixed by the court, dependent on general equitable considerations, would be to rewrite the Act, so as to vest in the court a

⁴ S. Rep. No. 985, 74th Cong., 1st Sess.; H. Rep. No. 1808, 74th Cong., 1st Sess.

6 *Wright vs. The Union Central Life Insurance Co. et al.*

power which Congress did not plainly delegate. This discretionary power of the court is exhausted when the court terminates the proceedings or accelerates their termination. Such termination can be effected only pursuant to the precise procedure which Congress has provided. And so we return to our reconciliation of the two apparently conflicting *provisos* of § 75(s) (3).

We hold that the debtor's cross petition should have been granted; that he was entitled to have the property reappraised or the value fixed at a hearing; that the value having been determined at a hearing in conformity with his request, he was then entitled to have a reasonable time, fixed by the court, in which to redeem at that value; and that if he did so redeem, the land should be turned over to him free and clear of encumbrances and his discharge granted. Only in case the debtor failed to redeem within a reasonable time would the court be authorized to order a public sale.

Some question has been raised as to the propriety of certain provisions of the public sale order, particularly those which give the creditor the right to utilize all of its indebtedness in bidding for the property.

The majority of the Court is of opinion that except for the modification we have indicated the order for sale should stand with the privilege of the respondent mortgagee to purchase at the sale and to receive credit for the indebtedness of the debtor in satisfaction of the purchase price and with the privilege of the debtor to redeem within ninety days upon payment of the sales price and interest thereon, as provided by § 75(s) (3) of the Act.

To the extent indicated, we modify the judgment; and we remand the cause to the District Court for further proceedings in conformity with this opinion.

It is so ordered.

A true copy.

Test:

Clerk, Supreme Court, U. S.